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ABSTRACT

In this monograph, the author examines the often controversial area of compulsory attendance, its philosophy and implementation. Through various case histories, the State's power vs the fundamental rights of individuals is studied at length. Litigations are reviewed in which a 3-way balance was sought among the State's interest, the child's interest, and the parents' interest. Statutory provisions affecting school attendance and student assignment and placement are outlined, and early compulsory attendance laws are examined to illustrate the progression towards achieving this balance. Tables and appendixes enable the reader to compare the approaches of the various 50 States to the subject of compulsory attendance, revealing the existence or nonexistence of such laws themselves and listing the penalties for noncompliance, where such laws are actually in effect. Alternatives and exemptions to compulsory attendance are also discussed. In this area, the historic Wisconsin vs Yoder case is reviewed -- a litigation in which Amish parents successfully contested the State's power to require the school attendance of their children past the eighth grade. Cases involving similar exemptions because of religion, marriage, mental or physical incapacity, distance from school, or work permits are also studied in detail. (Editor/EA)

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Legal Aspects of Educational Choice: Compulsory Attendance and Student Assignment

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Table of Contents

Foreword

Introduction

1. THE INTEREST TRIAD 1
   - The State's Interest 1
   - The Child's Interest 4
   - The Parent's Interest 6

2. STATUTORY PROVISIONS AFFECTING SCHOOL ATTENDANCE 8
   - Early Compulsory Attendance Statutes 9
   - Enrollment Patterns 11
   - Provisions of Existing Statutes 11
     - Mandatory and Permissive Age Limits 13
     - School Term 13
     - Exemptions 13
     - Child Labor Laws 17
     - Penalty for Noncompliance 18
     - School Census 18
   - Summary 19

3. COMPULSORY ATTENDANCE AND *PARENS PATRIAE* 19

4. ALTERNATIVES AND EXCEPTIONS TO COMPULSORY ATTENDANCE 24
   - Instruction in Private Schools 24
   - Instruction at Home 26
   - Exemption from Compulsory Attendance 30
     - Religion 30
     - Marriage 33
     - Vaccination 37
     - Other Reasons for Exemption 41
   - Summary 42

5. PARENTAL CHOICE AND SCHOOL POWER 43
   - School Power and the Academic Program 44
     - Judicial Support of School Power 44
     - Judicial Limitations on School Power 51
   - Summary 55

Appendix 57

FOREWORD

This monograph by Kern Alexander and K. Forbis Jordan is one of a series of state-of-the-knowledge papers on the legal aspects of school administration. The papers were prepared through a cooperative arrangement between the ERIC Clearinghouse on Educational Management and the National Organization on Legal Problems of Education (NOLPE). Under this arrangement, the Clearinghouse provided the guidelines for the organization of the papers, commissioned the authors, and edited the papers for content and style. NOLPE selected the topics and authors for the papers and is publishing them as part of a monograph series.

The student's freedom to attend or not attend school, to choose alternative schools, to determine his placement in the school, and to select programs and classes has been the subject of increasing political and legal debate. Dr. Alexander and Dr. Jordan skillfully analyze current statutory and case law showing that the resolution of the issue of educational choice involves a three-way balance among the interests of the state, the child, and the parent.

Dr. Alexander is a professor of educational administration at the University of Florida. He holds a bachelor's degree from Centre College of Kentucky, a master's degree from Western Kentucky University, and a doctor's degree from Indiana University. Since 1972 he has served as director of the National Educational Finance Project. He has written extensively on school law and school finance.

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INTRODUCTION

Individual freedom, as opposed to state compulsion, is a subject dear to the hearts of many Americans. Society's collective desires and needs are generally reflected through governmental action that benefits society at large. At the same time, however, this governmental action restricts the prerogative of certain individuals. It is this issue that confronts us in public education. Education, as any governmental function, in many cases restricts an individual's prerogatives or at least narrows his choices.

It is the question of educational *choice* to which this monograph is devoted. Student choice, parental choice, and educational alternatives (while of continuing historic importance) have recently received wide attention. Much has been written about compulsory miseducation, deschooling society, and the lack of student and parental choice. The student's freedom to choose alternative schools, as well as his freedom to select programs and gain placement within the school, have been litigated freely.

This monograph discusses the interests of the various parties involved, the status of current statutory law, the case law involving compulsory attendance and exemption therefrom, and individual choice of curriculum and program in the schools. An effort has been made to steer clear of extenuating legal circumstances (such as racial segregation), which tend to skew some of the precedents.

Fundamental to the entire discussion is recognition of the divergence of interests involved: the interests of the state, the student, and the parent. The legal conflicts all emanate from judicial interpretation of the boundaries of each of these interests.

1. THE INTEREST TRIAD

Throughout American history, there has been an abiding faith that education is the road to culture, economic stability, and social equality. This feeling was engendered originally by a "political impulse" that replaced the old religious motive as the incentive for education. The religious motive was the basis for the famous 1647 Massachusetts public school act, the preamble of which stated the "one cheife piect of ye ould deluder, Satan, to keepe men from the knowledge of ye scriptures."

THE STATE'S INTEREST

During the nineteenth century the purposes of the church were gradually superseded by purposes of the state. The interests and goals of the state were also those of the people. Individual liberty was to be buttressed and guaranteed by education.

Although this philosophy is reflected in many places, its essence is conveyed in the writing of three presidents of the United States. In his farewell address to the American people in 1796, Washington spoke of the benefits of education:

> Promote then, as an object of primary importance, institutions for the general diffusion of knowledge. In proportion as the structure of a government gives force to public opinion, it is essential that public opinion should be enlightened.

Jefferson in his much-quoted statement after his retirement from the presidency in 1816 said:

> If a nation expects to be ignorant and free in a state of civilization it expects what never was and never will be. . . . There is no safe deposit [for the functions of government], but with the people themselves; nor can they be safe with them without information.

James Madison wrote:

> A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy, or, perhaps, both. Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives.

Government should provide for education of the common man

not to perpetuate government but to guarantee individual liberty and freedom. Education should never be a state-controlled tool to perpetuate an undesirable form of government. It should be of interest to the state solely because it enlightens the citizenry.

This general interest of the state in education can be viewed in three areas of special interest—cultural, economic, and social equality.

For years educators have attempted to define the cultural benefits of education. Difficulties in adequately describing the benefits of education are to be expected since the most important qualities are intangible. The benefits of education lie principally in the promotion of citizenship, moral and ethical character, and appreciation of civilization. Primarily, the objectives are to develop a respect for humanity, to gain an appreciation of organized society, and to acquire the accumulated culture and knowledge of man. Education not only preserves the cultural heritage but also enlarges and augments the culture, providing a minimum standard of citizenship.

Universal education is also desirable economically. Free education provides an opportunity for individuals to secure a livelihood and economic independence. Aside from private interests, the society has an economic interest in the external benefits of education, the "spillovers" to society. It is well established that education is a capital good and that creating it is an investment. Education improves the quality of the labor force and benefits industry. Particularly at higher levels education creates new knowledge, which in turn creates increased human wants and demands, all of which are credits to the nation's wealth. Similarly, over time, the presence of educated people can reduce governmental costs by lowering crime and delinquency rates and cutting welfare costs.

As an enhancement of human capital, the desirability of investment in education is beyond question. Several studies have shown the contribution of education to the per capita income of a nation. For example, Denison estimated that education accounted for a third of the difference in United States per capita income between 1925 and 1960.[1]

In addition to purely economic benefits, education performs another important function by providing a means for personal social mobility. Public education, of course, has not created the move-

[1]Edward F. Denison, *Why Growth Rates Differ* (Washington: Brookings Institution, 1967), tables 21-1 through 21-20.

ment among the social classes to a degree deemed desirable by many Americans. The lack of equality has led some to flatly denounce public education as a failure.[2] Cremin, less vehemently, has pointed out that the "commonness" of the common school has been greatly exaggerated.[3] In fairness, these comments must be evaluated in light of some known facts.

First, the public schools offer students a generally uniform system of educational quality. Evidence from the famous Coleman report revealed a remarkable uniformity among schools' effects on educational outcomes, in spite of wide fiscal disparities among many school districts.[4]

Second, variations in student achievement are due more to differences in the student's family background than to the quality of the schools. In this regard, the role and expectation of the school should be defined. For those who expect the schools to erase all vestiges of social and familial inequality, the public schools have not been successful.

> That schools bring little influence to bear on a child's achievement that is independent of his background and social context; and that this very lack of an independent effect means that the inequalities imposed on children by their home, neighborhood, and peer environment are carried along to become the inequalities with which they confront adult life at the end of school.[5]

On the other hand, for those who expect public education to moderate and lessen, but not completely erase, social inequality, education has been much more successful. The United States has one of the lowest illiteracy rates and the highest per capita income in the world. While not eradicating social classes, public education tends to break down class barriers and provide for equality of opportunity. Equality of opportunity means that the impact of the parents' social station on the child is diminished so as to reduce social, economic, and other barriers. Such barriers could presumably be reduced without public education, but the odds against such an occurrence are much greater when free education is not offered.

Without *free public* education, education becomes a private en-

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[2]Charles E. Silberman, *Crisis in the Classroom* (New York: Random House, 1970), pp. 54-55.

[3]Lawrence A. Cremin, *The Genius of American Education* (New York: Vintage Books, 1966).

[4]James S. Coleman *et al.*, *Equality of Educational Opportunity* (Washington: U.S. Government Printing Office, 1966).

[5]*Ibid.*

terprise and a private interest, subject to individual caprice. The tendency is then for the upper classes to hand on their privileges and advantages to their children. While public education does not prevent the wealthy from providing their children better education, it does provide opportunity, at least, for the poor to break their cycle of poverty. There is little doubt that education is one of the primary contributors to social equality. Many consider it to be the most important single factor.

All these considerations are embodied in the state's interest in universal education. Judicial notice of the state's interest in education is common. Although broad and rather general, such judicial statements form a philosophical rationale supporting universal public education. The New Hampshire Supreme Court is one example of such judicial recognition:[6]

> The primary purpose of the maintenance of the common school system is the promotion of the general intelligence of the people constituting the body politic and thereby to increase the usefulness and efficiency of the citizens, upon which the government of society depends. Free schooling furnished by the state is not so much a right granted to pupils as a duty imposed upon them for the public good. If they do not voluntarily attend the schools provided for them they may be compelled to do so. While most people regard the public schools as the means of great advantage to the pupils, the fact is too often overlooked that they are governmental means of protecting the state from the consequences of an ignorant and incompetent citizenship.

THE CHILD'S INTEREST

In public education, the child's interest can be viewed in different ways. A child, as an individual, has the right to be free from parental abuse and unreasonable control. A child also has certain constitutional liberties, rights, and freedoms that cannot be denied by the state, without just cause and due process. The state itself has the responsibility of protecting the child from unwarranted state restriction on constitutional freedoms and from parental abuse (either commissions or omissions of the parents).

The early compulsory attendance laws of Massachusetts were undoubtedly based on the doctrine of *parens patriae*, a doctrine of the English court of chancery by which the chancellors of the king assumed the general protection of all infants in the realm. The sovereign, as *pater patriae*, was obligated to supervise the welfare of

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[6]State v. Jackson, 71 N.H. 552, 53 A. 1021 (1902).

the children of the kingdom who might be abused, neglected, or abandoned by their parents or other guardians.[7] In the United States, the transplanted English judicial system meant that the state took the place of the crown in matters of child welfare.

A child has a right to be protected not only from patent abuses by his parents but also against the ignorance of his parents. The state has recognized more truth than fiction in the adage, "There are no delinquent children, only delinquent parents." In support of this view, juvenile courts and welfare agencies of the state have traditionally intervened between parent and child in cases of parental abuse. Public education may thus serve as a mechanism to free the child from the shackles of unfit parents.

Although some accuse the public schools of undesirable propagandizing of youth, the entire educational process generally produces an independence of thought that frees the individual from the confines of conformity. The educational process also creates the opportunity to analyze alternatives and options not available to the unlearned. Dewey saw education as the great assimilative force in American society:

> The school has the function also of coordinating within the disposition of each individual the diverse influences of the various social environments into which he enters. One code prevails in the family; another, on the street; a third, in the workshop or store; a fourth, in the religious association. As a person passes from one of the environments to another, he is subjected to antagonistic pulls, and is in danger of being split into a being having different standards of judgment and emotion for different occasions. This danger imposes upon the school a steadying and integrating force.[8]

Attending school does not diminish a child's constitutional rights. The courts require that the child's constitutional rights be weighed against the interests of the school, which must provide an uninterrupted education for all children. Students' rights are derived from constitutional sources, the most pervasive of which are the fundamental First Amendment freedoms and the due process and equal protection clauses of the Fourteenth Amendment.

To protect the child from either the parent or the state requires affirmative state action. A child has no constitutional protection from the parent; such protection must come in the form of statutory action by the state to protect the child. Such protection is evidenced, in part, by compulsory attendance laws. On the other

[7]Margaret Keeney Rosenheim, *Justice for the Child* (New York: Free Press of Glencoe, 1962), pp. 22-23.

[8]John Dewey, *Democracy and Education* (New York: Macmillan Co., 1963), p. 22.

hand, the state's action must be supported by a compelling or, at least, a rational state interest before either the child's or the parent's rights can be restricted or infringed upon.

THE PARENT'S INTEREST

Early precedents in English law established the parent or guardian as the primary authority over the child's destiny. Reflecting this, the courts granted favor to the parental interest over the interest of the infant. In an early episode, known as Tremain's case in 1719, the court did the bidding of the parent or guardian with little concern for the wishes of the infant:

> Being an infant, he went to Oxford, contrary to the orders of his guardian, who would have him go to Cambridge. And the Court sent a messenger, to carry him from Oxford to Cambridge. And upon his returning to Oxford there went another tam to carry him to Cambridge quam to keep him there.[9]

Even in English law, however, the right of the parent was not unlimited, since the king had the responsibility to protect persons who were unable to protect themselves.[10] The parental right was further circumscribed in the famous custody case of *Wellesley v. Wellesley*.[11] In that case, the court declared that parents had rights to their children only by grace of the state. In the court's view, the delegation of control over children was a trust relationship, carrying the obligation that the parents faithfully discharge that trust. When it was not, and the parent was cruel to his child or failed to maintain him, the state could intervene. The Wellesley theory of *parens patriae* has not changed significantly in its voyage across the Atlantic or in the passage of time.[12]

In the United States today a dual set of precedents has emerged. One tends to limit *parens patriae*, as is evidenced by court-imposed limitations on state handling of juvenile cases.[13] More recently this limit was illustrated by the exception of state compulsory attendance laws, as established in *Yoder*.[14] The second precedent is a tendency of the courts to allow the state to protect the infant from parental abuse. This tendency was reflected by the United States Supreme Court in *Ford v. Ford*[15] in 1962:

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[9]Tremain's Case, 1 Strange 167 (1719).
[10]Eyre v. Countess of Shaftsbury, 24 Eng. Rep. 659 (ch. 1722).
[11]4 Eng. Rep. 1078 (H. L. 1828).
[12]Andrew Jay Kleinfeld, "The Balance of Power among Infants, Their Parents and the State," *ABA Family Law Quarterly* 5 (1971): 64-66.
[13]*In re* Gault, 387 U.S. 1 (1967).
[14]Wisconsin v. Yoder, 92 S.Ct. 1526 (1972).
[15]Ford v. Ford, 371 U.S. 187 (1962).

> Unfortunately, experience has shown that the question of custody, so vital to a child's happiness and well-being, frequently cannot be left to the discretion of the parents. This is particularly true where, as here, the estrangement of husband and wife beclouds parental judgment with emotion and prejudices.

The language of the Supreme Court in *Pierce v. Society of Sisters*[16] indicated that only limited tolerance would be given the state in interfering with the parent's control of a child:

> In this day and under our civilization, the child of man is his parent's child and not the state's. . . . It is not seriously debatable that the parental right to guide one's child intellectually and religiously is a most substantial part of the liberty and freedom of the parent.

This does not mean that parental rights preempt entirely those of the state. On the contrary, it would appear that a parent may forfeit his right to control his child by either omission or commission. In such an instance, the parent has no immunity from state intervention.

Nearly twenty years later in 1943 the Supreme Court contradicted the impression of *Pierce* when it more clearly defined its position toward state intervention in *Prince v. Massachusetts.*[17] In this case, a legal guardian was found guilty of contributing to the delinquency of a minor by permitting her nine-year-old ward to sell Jehovah's Witnesses publications on a public street. The act was found to be in violation of Massachusetts' child labor laws. The Supreme Court, faced squarely with conflicting claims of parent and state, said:

> [T]he family itself is not beyond regulation in the public interest . . . acting to guard the general interest in youth's well being, the state as *parens patriae* may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor and in many other ways.

More recently in *Yoder*, the court said that the power of the parent, even when linked to free exercise of religion, may be subject to limitation if it appears that parental decisions will jeopardize the health or safety of the children or have "potential for significant social burdens."

A common thread seeming to run through these precedents is a new judicial concern for the child himself with the parental interest and the state interest secondary. The apparent common belief

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[16]Pierce v. Society of Sisters, 268 U.S. 510 (1925).
[17]Prince v. Massachusetts, 321 U.S. at 166 (1943).

of the courts is that both the parent *and* the state are capable of transgressing their roles as protectors of children.

2. STATUTORY PROVISIONS AFFECTING SCHOOL ATTENDANCE

As a new nation the United States separated church and state, placing responsibilities for education with the state. Additional impetus to the movement for free public education, and subsequently compulsory attendance, originated in the general assumption that an educated and informed populace was necessary for the nation's survival.

Before the movement for independence the citizens of Massachusetts had already required that schools be provided under laws of 1642 and 1647. This compulsory provision of school services did much to encourage school attendance, but it was not compulsory attendance as such. Action on compulsory attendance came more slowly among the states, with the first legislation finding its source in the Rhode Island Child Labor Law of 1840. The first compulsory attendance law was enacted by Massachusetts in 1852.[18]

In a nation with representative government, legislation generally reflects and implements the basic judgments of the people on those affairs that concern them. Compulsory attendance laws provide a vivid example of the evolution of social and economic concepts and conditions. Although more than three-quarters of a century elapsed between the passage of the compulsory attendance law in Massachusetts and the enactment of such a law in Alaska, the uniformity in the laws of the various states is remarkable.

For the advocates of public education, the establishment of free schools was often an empty victory. The indifference of parents, the natural rejection of a regimented school setting by children, the lack of adequate school facilities, the child labor opportunities, and the general low standard of living all worked against families and children taking advantage of the opportunities offered.

The power of the state over the family has long been a point of controversy. The potential for child neglect and exploitation in the labor market contributed to the passage of legislation on child labor and compulsory school attendance. In the United States, such legislation began to emerge in the latter part of the nineteenth

[18]Edgar W. Knight, *Readings in Educational Administration* (New York: Holt, 1953).

century. Public opinion and, subsequently, the law had come to endorse the principle of state intervention in the family in cases of neglect. Public action through legislation, however, had major obstacles to overcome. Even though the importance of an educated populace was commonly espoused, many citizens supported a governmental position of laissez-faire. To many, statutory intervention appeared to strike at the very roots of individual liberty. On the other hand, many United States citizens had a basic commitment to the parent's obligation to educate his children.[19]

In an immobile society oriented to an agrarian and apprenticeship economy, the need for compulsory education was not perceived to be as great as in a mobile industrialized society. The need for children to work at home in a rural economy largely disappeared. With the development of the factory system and the resulting rapid expansion of the organized labor movement, child labor laws and compulsory school attendance moved in consort. The interaction may be either sequential or overlapping, providing for the child to leave school and then enter employment, or requiring the child to attend school as a condition of employment. In the first instance, compulsory attendance is a prerequisite to employment, and in the second instance part-time compulsory attendance is required for continued employment.

In 1866, fourteen years after the enactment of the Massachusetts compulsory attendance law, the commonwealth enacted a law that provided for a minimum employment age of ten years. Six months school attendance each year was established as a condition of employment between the ages of ten and fourteen. In New York's compulsory attendance act of 1874, fourteen weeks attendance was required each year for children between the ages of eight and fourteen. A further provision was made that none of these children could be employed unless school attendance was a condition of employment.[20]

EARLY COMPULSORY ATTENDANCE STATUTES

Massachusetts' original compulsory attendance law provided the pattern that has continued to the present day. This early statute stipulated that attendance in public school was required, unless the parent could demonstrate that his child had received equivalent

[19]Margaret Kenney Rosenheim, "Laws Concerning Children: United States." *Encyclopaedia Brittanica*, vol. 5 (1966), pp. 514-516.

[20]R. Oliver Gibson, "Attendance," *Encyclopedia of Educational Research*, 4th ed. (London: The Macmillan Company, 1969), pp. 90-98.

education elsewhere. Other provisions provided for enforcement of the attendance law by truant officers and school officials. Fines of up to $20 were possible for violation.[21] As shown in table 1,

TABLE 1. DATES OF ENACTMENT OF COMPULSORY SCHOOL ATTENDANCE LEGISLATION: FIFTY STATES INCLUDING THE DISTRICT OF COLUMBIA AND PUERTO RICO

State	Date	State	Date
Massachusetts	1852	Oregon	1889
District of Columbia	1864	Utah	1890
Vermont	1867	New Mexico	1891
New Hampshire	1871	Pennsylvania	1895
Michigan	1871	Kentucky	1896
Washington	1871	Hawaii	1896
Connecticut	1872	West Virginia	1897
Nevada	1873	Indiana	1897
Texas	1873	Arizona	1899
New York	1874	Iowa	1902
Kansas	1874	Maryland	1902
California	1874	Puerto Rico	1903
Maine	1875	Missouri	1905
New Jersey	1875	Tennessee	1905
Wyoming	1876	Delaware	1907
Ohio	1877	North Carolina	1907
Wisconsin	1879	Oklahoma	1907
Rhode Island	1883	Virginia	1908
Illinois	1883	Arkansas	1909
North Dakota	1883	Louisiana	1910
South Dakota	1883	Alabama	1915
Montana	1883	Florida	1915
Minnesota	1885	South Carolina	1915
Nebraska	1887	Georgia	1916
Idaho	1887	Mississippi	1918
Colorado	1889	Alaska	1929

SOURCE: Nelda Umbeck, *State Legislation on School Attendance* (Washington: U.S. Government Printing Office, 1960), OE-24000, 33 pp.

twenty-five states had enacted compulsory attendance laws within thirty-five years.[22] By 1918, all the states had such laws.[23]

Although compulsory attendance laws had been enacted in most states at that time, the United States commissioner of education in 1889[24] reported that his survey indicated inadequate enforcement

[21] *Annual Report of the Commissioner of Education* 1888-89, vol. 1 (Washington: U.S. Government Printing Office, 1891), ch. 18.

[22] *Ibid.*, p. 470.

[23] W. S. Deffenbaugh and Ward W. Keesecker, *Compulsory School Attendance Laws and Their Administration* (Washington: U.S. Government Printing Office, 1935), U.S. Office of Education Bulletin No. 4.

[24] *Annual Report of the Commissioner, supra* note 21.

of the laws. Apathy on the part of public officials, school facilities inadequate to accommodate all children, or laws too vague to facilitate enforcement or assessment of penalties were cited as reasons by the commissioner.

ENROLLMENT PATTERNS

From the turn of the century until the early 1960s, significant advances were made in the total number of enrolled students per one hundred persons fourteen to seventeen years of age. Possibly the most significant increase occurred during the decade of the 1930s, which reflected a 40 percent increase.

As shown in table 2, each decade since 1900, schools in the United States continued to enroll larger proportions of the children aged fourteen to seventeen. However, table A-1 in the Appendix indicates that the pattern appears to have stabilized since the 1961-62 school year. At that time, the relative percentage of children enrolled in school reached a maximum theoretical level, the result of a variety of conditions.

The combined effects of child labor laws and the labor movement have sharply reduced the employment opportunities available to youth aged fourteen to eighteen years. The increased educational requirements for various fields of employment and parental and social pressures have also influenced continued enrollment. Increased attention has been given both to the development of programs for handicapped children and to the application of compulsory attendance laws to these children. While its adequacy may be questioned by some, the educational enterprise has gradually accepted more of its responsibility to provide relevant educational programs for all segments of the population. In addition, state school finance programs and social pressures have resulted in more effective enforcement of compulsory attendance laws. These conditions, working separately and in combination, have produced a historical proportional growth in school enrollment.

PROVISIONS OF EXISTING STATUTES

Compulsory attendance laws among the states are strikingly similar in their overall pattern, despite some differences in detail. Uniformly, they refer to minimum and maximum ages, provide for permissive attendance beyond these limits, stipulate the term for school operation, impose the legal obligation concerning regular at-

TABLE 2. ENROLLMENT IN GRADES 9-12 IN PUBLIC AND NONPUBLIC SCHOOLS COMPARED WITH POPULATION 14-17 YEARS OF AGE: UNITED STATES, 1889-90 TO FALL 1970

School Year	Enrollment, grades 9-12 and postgraduate[1]	Population 14-17 years of age[2]	Total number enrolled per 100 persons 14-17 years of age
1899-1900	699,403	6,152,231	11.4
1909-10	1,115,398	7,220,298	15.4
1919-20	2,500,176	7,735,841	32.3
1929-30	4,804,255	9,341,221	51.4
1939-40	7,123,009	9,720,419	73.3
1949-50	6,453,009	8,404,768	76.8
1959-60	9,599,810	11,154,879	86.1
Fall 1970[4]	14,840,000	[3]15,816,000	93.8

[1]Unless otherwise indicated, includes enrollment in subcollegiate departments of institutions of higher education and in residential schools for exceptional children. Beginning in 1949-50, also includes federal schools.

[2]Includes all persons residing in the United States, but excludes Armed Forces overseas. Data shown are actual figures from the decennial censuses of population unless otherwise indicated.

[3]Estimated by the Bureau of the Census as of July 1 preceding the opening of the school year.

[4]Preliminary data.

NOTE: Beginning in 1959-60, includes Alaska and Hawaii.

SOURCE: U.S. Department of Health, Education, and Welfare, Office of Education, *Biennial Survey of Education in the United States*, chapters on Statistical Summary of Education; and unpublished data available in the Office of Education.

FROM: U.S. Department of Health, Education, and Welfare, Office of Education, *Digest of Educational Statistics, 1971 Edition*, p. 27, table 31.

tendance, exempt certain groups from the requirements, and provide penalties for noncompliance and procedures for enforcement.

Compulsory attendance laws are found in all states except Mississippi. (The laws in Virginia, however, are applicable only at the option of the local school board.) After repealing its compulsory attendance law, South Carolina reenacted its statute in 1967. Table A-2 in the Appendix contains the statutory reference for the primary statute in each of the fifty states plus the District of Columbia and Puerto Rico. These state statutes composed the primary source for the 1972 information contained in this chapter.

(In the following discussion "states" will be used to refer to the fifty states plus the District of Columbia and Puerto Rico.)

Mandatory and Permissive Age Limits

Patterns among the several states appear to be moving toward required school attendance at an earlier age and for an increased number of years. Enrollment at an earlier age and more years of actual school attendance seem to be the pattern for permissive attendance as well.

The current age attendance requirements are shown in table 3. The most common age requirements for compulsory attendance are seven to sixteen years. When the data in this table are compared with the information in table A-3, in the Appendix, several trends are evident. The states have tended to reduce the minimum compulsory attendance age from eight to six years. Concurrently, the tendency has been to increase the maximum age from fourteen to sixteen years. Statutes have also prescribed the permissive ages for school attendance, that is, the ages between which pupils shall be permitted to attend schools. The trend for permissive attendance has been toward enrollment at an earlier age and more years of actual school attendance.

In 1887, only twenty-four statutes prescribed attendance age limits. By 1972, in contrast, attendance age limits were ordered in all the compulsory attendance statutes.

The impact of the "kindergarten movement" has left its mark on the permissive attendance levels in several states. As states move toward mandatory or permissive kindergarten, the permissive attendance age is generally lowered to five or six years. This is often accomplished through a special provision to permit the attendance of younger children under the permissive school age. This latter pattern existed in twenty-seven states in 1972. The maximum age for permissive attendance was commonly twenty-one years. This was the pattern in twenty-one of the thirty-two statutes that had prescribed a maximum age. (Detailed information for each state is reflected in table A-4 in the Appendix.)

School Term

Between the turn of the century and 1930 significant increases were made in the average length of the school term. As table 4 shows, the average length of the school term in the 1899-1900 school year was 144.3 days, but, by 1929-30, it had increased to 172.7 days. Little progress was evident during the next thirty-eight years, since the average length of school term increased only 6.1 days, reaching 178.8 days by 1967-68.

TABLE 3. COMPULSORY SCHOOL ATTENDANCE AGE LIMITS: FIFTY STATES INCLUDING THE DISTRICT OF COLUMBIA AND PUERTO RICO, 1972.

State	Age Range	State	Age Range
Alabama	7-16	Montana	7-16
Alaska	7-16	Nebraska	7-16
Arizona	8-16	Nevada	[2]7-17
Arkansas	7-16	New Hampshire	6-16
California	6-18	New Jersey	6-16
Colorado	[1]7-16	New Mexico	6-17
Connecticut	7-16	New York	6-16
Delaware	6-16	North Carolina	7-16
District of Columbia	7-16	North Dakota	7-16
Florida	7-16	Ohio	6-18
Georgia	7-16	Oklahoma	7-18
Hawaii	6-18	Oregon	7-18
Idaho	7-16	Pennsylvania	[3]8-17
Illinois	7-16	Puerto Rico	8-14
Indiana	7-16	Rhode Island	7-16
Iowa	7-16	South Carolina	7-16
Kansas	7-16	South Dakota	7-16
Kentucky	7-16	Tennessee	7-17
Louisiana	7-16	Texas	7-17
Maine	7-17	Utah	6-18
Maryland	6-16	Vermont	7-16
Massachusetts	6-16	Virginia	[4]6-17
Michigan	6-16	Washington	8-18
Minnesota	7-16	West Virginia	7-16
Mississippi		Wisconsin	7-16
Missouri	7-16	Wyoming	7-16

[1]Migrant children are required to attend school.
[2]Indian children aged eight to twenty must attend United States schools established for them.
[3]Migratory children of compulsory school age must attend school.
[4]If law is adopted locally.
NOTE: Where there is no entry, a state had no compulsory attendance law for the year reported. The laws typically permit exemptions for children within the age ranges for several reasons, such as completion of certain grades or, under certain conditions, employment.
SOURCE: Analysis of statutes from individual states.

An analysis of the minimum required school term revealed that the most common minimum term was 180 days. The term of 175 days was the next most prevalent required length of school year. In two cases, the required school year was in excess of 180 days and, in three instances, was less than 175 days. Summary data are shown in table 3, and complete data are contained in table A-3 in the Appendix.

TABLE 4. AVERAGE LENGTH OF SCHOOL TERM (IN DAYS): UNITED STATES, 1869-70 TO 1967-68

Year	Average Length of School Term (In Days)
1869-70	132.2
1879-80	130.3
1889-90	134.7
1899-1900	144.3
1909-10	157.5
1919-20	161.9
1929-30	172.7
1939-40	175.0
1949-50	177.9
1959-60	178.0
1965-66	178.9
1967-68	178.8

SOURCE: U.S. Department of Health, Education, and Welfare, Office of Education, *Statistics of State School Systems, 1967-68.*

TABLE 5. MINIMUM SCHOOL TERM REQUIRED: FIFTY STATES INCLUDING THE DISTRICT OF COLUMBIA AND PUERTO RICO, 1972

Number of Days	Number of States
160	1
165	1
174	1
175	10
176	1
177	1
180	31
182	1
185	1
Number of Months	**Number of States**
9 months	2
10 months	1
No provision	1

SOURCE: Analysis of statutes from individual states.

Exemptions

The most common practice, among the states, has been to specify exemptions from the compulsory attendance statutes. The courts have also prescribed certain conditions under which children are exempt from these statutes.

In forty-seven states, a child could be exempted from compulsory attendance because of mental, emotional, or physical disability.

Satisfactory completion of a required minimum educational program was sufficient for exemption in twenty-nine states. Completion of the twelfth grade was the required level of compliance in nineteen cases. The statutes of twenty-four states specifically mentioned attendance at a nonpublic school as sufficient reason for exemption from the compulsory attendance provisions. In fourteen cases, a child could be exempted if he were receiving instruction from a private tutor. These data are shown in table A-6 in the Appendix.

The absence of pupil transportation was ample grounds for exemption from the statutory compulsion in fifteen states, provided the child resided a specific distance from the school to which he was assigned. In all but two of the fifteen cases, the statutes specified the distance the child would have to live from school to be exempt. The most common distance was 2½ miles with different requirements for children of varying ages in several states.

Exemptions were permitted for legal employment in twenty-three states. To qualify for this exemption, children were required to have a work permit and to have reached a certain age, typically fourteen years. In twenty states, statutes empowered the school board, superintendent of schools, or judicial official to approve school attendance exemptions for reasons other than employment. (The footnotes on table A-6 in the Appendix provide additional detail on this item and the material discussed in the previous paragraph.)

The application of compulsory attendance statutes to married students varies among the states. Information on this item was not gathered from every state, but the data that were collected can be classified into three patterns.

The first is that married students may be exempt from compulsory attendance provisions and choose not to attend school. Statutory provisions in Florida provided this option for the student. Likewise, an official opinion of the attorney general in Idaho exempted married students. A court case in Louisiana stipulated that a married woman was not subject to compulsory attendance provisions. Also, an official opinion in Missouri exempted married women.

A second pattern was reported from Wisconsin, where the attorney general stipulated that a married child could be compelled to attend school.

The third pattern was observed in seven other states where local

school authorities had sought to exclude students solely on the basis of marriage but were prevented from doing so. Attorneys general in Colorado, Kansas, Kentucky, Minnesota, Arizona, Louisiana, and New Mexico ruled that marriage alone was not sufficient grounds to justify excluding a child from school. The Kentucky opinion invalidated the local school board's authority to exclude the married student even when she was pregnant.

A less definite legal situation was exemplified in the compulsory attendance statutes of Georgia, which empowered the local school board to set rules concerning the rights of married students to attend schools.

Child Labor Laws

Child labor laws and compulsory attendance laws both limit child and parental choice concerning school attendance, though both were designed for humanitarian reasons. The sixteen-year-old limit in the Fair Labor Standards Act of 1938[25] was probably derived from the idea that children should be in school until that age.

While the welfare of the child is the primary motive for child labor and compulsory attendance laws, there is a secondary goal to be considered. To permit a child labor force to displace adult workers is not necessarily desirable for the individuals involved or for the economy. Child labor and attendance laws act to retard such competition. As pointed out in *Yoder*, such laws provide the child with the full opportunity to prepare for a better livelihood than he could have without education. They also serve to protect his health during adolescence.[26]

The connection between child labor and compulsory education is quite clear if one views the developments in England. Before general schooling was made compulsory, the child labor laws required the employer to make some effort to educate working children. Under the British Factory Act of 1833, children were required to have a "schoolmaster's ticket"—a certificate stating they were receiving a minimum of two hours of education instruction a day.[27] Such early provisions undoubtedly laid the groundwork for compulsory attendance laws.

Child labor laws and compulsory attendance statutes have been very closely related. In 1920, the United States census reported that

[25]52 Stat. 1060, as amended, 29 U.S.C. § 201-219.
[26]*Wisconsin, supra* note 14.
[27]Charles K. Woltz, "Compulsory Attendance at School," *Law and Contemporary Problems*, Duke University, 20 (1955): 17.

approximately one million persons between the ages of ten and fifteen years were gainfully employed. Organized labor and other groups, such as the National Congress of Parents and Teachers, joined together to support legislation restricting the employment of minors. At the present time, virtually all states have child labor laws, and the Federal Fair Labor Standards Act covers the employment of minors in interstate and foreign commerce.[28] As shown in table A-7 in the Appendix, the typical minimum age at which a child may be issued a permit for employment during school hours was fourteen. Among the several states, a permit was normally required for a child to be employed between the ages of fourteen and sixteen years. In those statutes that stipulated a minimum level of educational attainment prior to the issuance of a permit, the most prevalent requirement was for completion of the eighth grade. In approximately one-third of the states, no minimum level of educational attainment was stipulated. In a comparison of the 1972 pattern to that of 1963,[29] minor changes in statutes were noted in only six states.

Penalty for Noncompliance

The parent is normally held responsible for assuring that his child meets the requirements of compulsory attendance statutes. Table A-8 in the Appendix indicates that all but ten states had a specific fine for noncompliance. The amount of the fine varied greatly among the states, however. Because of this diversity, a summary table on this area was not prepared, but the following statements provide examples of the variations in states' provisions. Fines for noncompliance usually had a maximum of $50 to $100. Possible terms of imprisonment ranged from as high as six months in Indiana to ninety days in Alabama, Arizona, Florida, Michigan, and New Mexico. While the crime was regarded as a misdemeanor, punishment could be rather harsh.

School Census

The number of states with statutory requirements concerning a school census appears to be decreasing according to table A-9 in the Appendix. In 1972, thirty-three states had mandatory pro-

[28]For a state-by-state summary of laws affecting the employment of minors, see *State Child Labor Standards* (Washington: U.S. Government Printing Office, 1965), U.S. Department of Labor, Bulletin No. 158, Revised 1965.

[29]August W. Steinhilber and Carl J. Sokolowski, *State Law on Compulsory Attendance* (Washington: U.S. Government Printing Office, 1966), Office of Education Circular No. 793.

visions for a school census, while seven additional states had permissive provisions. In these forty states the school census was usually conducted annually, and the age span was generally from birth to age eighteen or twenty-one.

Thirty-four states had statutory provisions relating to the census of the handicapped. Of these states, twenty-nine made the census mandatory. This special census was normally taken annually.

SUMMARY

To identify discernible trends, the 1972 statutory provisions were compared with those of 1963. An item-by-item analysis indicated that changes had been minor during the intervening period, with the exception of five areas.

1. The effect of voluntary and required kindergarten programs in the states reduced the permissive school entrance age. Special provisions relating to permissive attendance for children under six years further indicated the impact of these programs.
2. As the states moved toward requiring special education programs in the local school districts, special provisions and exemptions from compulsory attendance statutes concerning physically or mentally handicapped students were repealed or amended. Instead, emphasis was placed, on providing these students with special programs *in* the schools rather than exempting them *from* school.
3. Penalties for lack of compliance with compulsory attendance laws were made more severe in a few states by raising the level of the fine.
4. Standards were raised regarding the required length of the school term, though the number of required days had not increased nationally to any degree since 1963.
5. Statutes tended to contain fewer detailed provisions. The new trend was for the statutes to provide broad guidelines and for the state board of education to be responsible for the details.

3. COMPULSORY ATTENDANCE AND *PARENS PATRIAE*

Few would dispute the state's legal competence in requiring children be exposed to a certain amount of instruction.[30] Although

[30]Jackson v. Hankinson, 51 N.J. 230, 238 A. 2d 685 (1968).

compulsory attendance restrains a child's liberty, these laws have had uniform acceptance by the courts.

State intervention to compel education includes distinguishable premises: the state may provide education for all who cannot appropriately educate themselves, protect infants from those who would deny them education, and compel all citizens to act in ways most beneficial to the child and society.[31] Reflecting state concern in these areas, compulsory attendance laws both require education and provide enforcement to protect the child from undesirable parental conduct.[32]

Cases involving challenges to compulsory attendance laws emanate from disputes between parents and officials. Whether compulsion to attend school is a direct denial of the child's liberty has not been litigated. This may be due, in part, to the old notion that "the basic right of a juvenile is not to liberty but to custody."[33] It may also result directly from enforcement provisions in compulsory attendance laws that penalize the parent, rather than the child.

Confrontation between state and parent instead of between state and child is probably the result of two subtle theories suggested by Kleinfeld.[34] One is that parents have a duty to a child to educate him, and the state may compel fulfillment of this duty. The other is that parents have a duty to the state to educate their children, which the state may compel them to perform.

Whether the judgment of the parent should prevail over the collective judgment of the state in educational matters is a much broader question, however, than simple challenges to compulsory attendance laws. In a dispute between parent and state regarding an educational matter, parents may be pictured as intelligent, well-meaning, and motivated for the betterment of the child. This is not always the case. The invocation of the doctrine of *parens patriae* in matters of education may result from broken homes where parents will not assist or support the child in obtaining an education. Where children have sought financial assistance from parents toward a common school education, the courts have uniformly termed such education a "necessary" and granted the support. Common school education is a "necessary," just as food, lodging, clothing, and medicine are.[35]

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[31]Kleinfeld, "The Balance of Power," *supra* note 12, p. 107.
[32]Salem Community School Corp. v. Easterly, 275 N.E. 2d 317 (Ind. 1971).
[33]*Id.*, p. 92.
[34]*Id.*, p. 93.
[35]Morris v. Morris, 92 Ind. App. 65, 171 N.E. 386 (1930); Sisson v. Schultz, 251 Mich. 553, 232 N.W. 253 (1930).

In the courts' view, common school education has traditionally been of such importance that even items assisting school attendance have been considered necessary for child support purposes. For example, one early Texas court held that a buggy may be a "necessary" if it is needed to convey a child to and from school.[36] In some states, the courts have given alimony decrees that consider education over and beyond the normal public school education as a "necessary." In *Luques v. Luques*,[37] for instance, the court ordered additional alimony for the musical training of a minor child. An Illinois court held that the father should pay an increased amount to send his daughter to a private school.[38]

The triangle of power among child, parent, and state has also extended to the colleges, though early precedents rather uniformly contended that a college education was not a "necessary." Such a position was taken by a New Jersey court. The court said that a father,[39] unless his parental authority has been taken away by the courts, is the one to decide the extent of his child's education beyond that required and provided by the state. Furthermore, the court ruled, the father is under no legal duty to send his son to a boarding school, regardless of his financial circumstances. As recently as 1959, an Indiana court ruled that a father should not be required to furnish his eighteen-year-old son a college education.[40]

In spite of these precedents, there has been a growing view by the courts that a divorced parent might be required to send his child to college. In 1926[41] a father was required to provide the funds to send his eighteen-year-old daughter to college. The court maintained that it is the public policy of the state for all its citizens to have a college education, if possible. The court thought it possible in this instance and said further,

> Nor should the court be restricted to the station of the minor in society, but should, in determining this fact: take into consideration the progress of society, and the attendant requirements upon the citizens of today.[42]

In *Refer v. Refer*,[43] a Montana court ordered a divorced husband to pay $35 per month for college expenses of his son. A Califor-

[36]Heffington v. Jackson and Norton, 43 Tex. Cir. App. 560, 96 S.W. 108 (1906).
[37]Luques v. Luques, 127 Me. 356, 142 A. 263 (1928).
[38]Hilliard v. Anderson, 197 Ill. 549, 64 N.E. 326 (1902).
[39]Ziesel v. Ziesel, 93 N.J. Eq. 153, 115 Atl. 435 (1921).
[40]Haag v. Haag, 163 N.E. 2d 243 (Ind. 1959). *See also* Middlebury College v. Chandler, 16 Vt. 683, 42 Am. Dec. 537 (1844); Halsted v. Halsted, 239 N.Y. Supp. 422, 228 App. D. 298 (1930).
[41]Esteb v. Esteb, 138 Wash. 174, 244 p. 264 (1926).
[42]*Id.*
[43]Refer v. Refer, 102 Mont. 121, 56 P. 2d 750 (1936).

nia[44] court held that a father, if financially able, could be required to provide funds to send a minor child over sixteen years of age to college. The ruling was made in view of the "public policy of the state that a college education should be had, if possible, by all its citizens." In 1951 in *O'Brian v. Springer*,[45] the court said the duty of the father to his child included providing a high school education, and, if special aptitude is shown by the child, a college education may be required. An Illinois court[46] in 1957 extended this point of view by ruling:

> [I]t is the obligation of a parent of ample means to support a child incapable of self-support beyond the period of that child's minority and this obligation includes the duty to provide not only care and bare necessities but also a college education, where that appears desirable in order to better equip the child for adult life.

Responding to these trends, Roscoe Pound said:

> [R]ecent legislation and judicial decision have changed the old attitude of the law with respect to dependent members of the household. Courts no longer make the natural rights of parents with respect to children the chief basis for their decisions. The individual interest of parents which used to be the one thing regarded has come to be almost the last thing regarded as compared with the interest of the child and the interest of society. In other words, here also social interests are now chiefly regarded.[47]

Exercise of *parens patriae* by the state may result in more severe action than that of requiring a child to attend school or mandating that a parent furnish resources for attendance in school or college. The child-parent relationship can be partly or totally severed by judicial enforcement of divorce, neglect,[48] or child abuse statutes.[49] Most states have such statutes.

The concept of *parens patriae* extends to compulsory medical care over the objection of parents. Some states have explicit statutory language declaring a parent neglectful if he fails to provide medical care for his child. Under a finding of neglect, the court is empowered to provide the necessary medical care.[50] At least

[44]Hale v. Hale, 55 Cal. App. 2d 879, 132 P. 2d 67 (1942).

[45]O'Brian v. Springer, 107 N.Y.S. 2d 631, 202 Misc. 210 (1951). *See also* Jonitz v. Jonitz, 25 N.J. Super. 544, 96 A. 2d 782 (1953).

[46]Strom v. Strom, 131 Ill. App. 2d 354, 142 N.E. 2d 172 (1957).

[47]Roscoe Pound, *The Spirit of the Common Law* (Boston: Marshall Jones Co., 1921), p. 189.

[48]Hiram D. Gordon, "Terminal Placements of Children and Permanent Termination of Parental Rights: The New York Permanent Neglect Statute," *St. Johns Law Review* 46 (1971): 215.

[49]Harvey J. Eger and Anthony J. Popeck, "The Abused Child: Problems and Proposals," *Duquesne Law Review* 8 (1969-70): 136.

[50]State v. Perricone, 181 A 2d 751 (N.J. 1962); People v. Pierson, 176 N.Y. 201, 68 N.E. 243 (1903).

one court has held that it can make a child the ward of the state and require medical care, acting in *parens patriae*, in the absence of statute and under common law.[51]

A Texas court has held that "medicines, medical treatment and attention, are in a like category with food, clothing, lodging and education as necessaries from parent to child, for which the former is held legally responsible."[52]

In 1880, a notable Pennsylvania case featured a father who neglected to obtain medical attention for his ill children. The father had concocted and administered a "witches' brew," the "Baunscheidt panacea," to his children. It was noted that the infants in question had been predeceased by their mother and three brothers and sisters, whether or not as a result of the "panacea." Over the father's objections, the court appointed guardians for the children.[53]

It should be noted that the invocation of *parens patriae* by the states does not restrict parental authority in all cases. In some instances, such action may even strengthen it. In cases where parents are unable to control their own children, the child's action produces not only disharmony within the family but sometimes becomes a nuisance to the public generally. For such situations, some states have enacted "stubborn child laws"[54] that protect the public from children who are "runaways, night walkers, common railers and brawlers." In upholding the power of the state to enact and enforce a stubborn child law, the Massachusetts Supreme Judicial Court has said:

> While the state defers to the parents with respect to most decisions on family matters, it has an interest in insuring the existence of harmonious relations between family members, and between the family unit and the rest of public society. To protect this interest, the State may properly require that unemancipated children obey the reasonable and lawful commands of their parents, and it may impose criminal penalties on the children if they persistently disobey such commands. The State is not powerless to prevent or control situations which threaten the proper functioning of a family unit as an important segment of the total society.[55]

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[51]Morrison v. State, 252 S.W. 2d 97 (Mo. App. 1952).
[52]Mitchell v. Davis, 205 W.W. 2d 812 (Tex. Cir. App. 1947).
[53]Heinemann's Appeal, 96 Pa. 112 (1880).
[54]*Massachusetts Gen. Laws Ann.*, ch. 272, § 53 (1958).
[55]Commonwealth v. Brasher, 270 N.E. 2d 389 (1971).

4. ALTERNATIVES AND EXCEPTIONS TO COMPULSORY ATTENDANCE

When compulsory attendance laws are mentioned, one usually thinks of children being compelled to attend only public schools. However, many alternatives and exceptions exist. A child may have the prerogative of home instruction or attendance at private, profit, nonprofit, sectarian, or secular schools. A child may also be exempt from required attendance because of religion, marriage, physical or mental incapacity, distance of travel, and so on. Courts have established many precedents that even today are in a state of transition. This chapter contains the primary alternatives and exemptions to compulsory attendance as defined by these judicial decrees.

INSTRUCTION IN PRIVATE SCHOOLS

Few cases have defined "private school" as used in compulsory attendance laws.[56] Precise definition is lacking perhaps partly because in several jurisdictions children are not required to attend either public or private schools but must obtain "equivalent instruction."[57] Although vaguely defining the term "equivalent" as meaning "equal," the court generally refers to the qualifications of the instructor and the available teaching materials as the primary criteria for determining equivalency of instruction.

Ohio statutes, for example, do not require all children to attend public schools but do require them (with certain exceptions) to attend recognized public, private, or parochial schools.[58] To be "recognized" a private school must provide instruction equivalent to the free instruction furnished in public schools. To have equivalent instruction, it is also necessary for the private school to comply with the statutory period of attendance.[59]

A correspondence school was not within the contemplated definition of private school even where parents served as tutors for their children. In this particular California case, the court ruled that the parents did not have state teaching credentials. The parents admitted that they had not provided the children with instruction in civics and California history, as required by law.[60]

Although the state can require instruction equivalent to that of

[56]*See* Alexander v. Bartlett, 14 Mich. pp. 177, 165 N.W. 2d 445 (1968).
[57]14 ALR 2d 1369; Knox v. O'Brien 7 N.J. 608, 72 A. 2d 389 (1950).
[58]State v. Hershberger, 103 Ohio App. 188, 144 N.E. 2d 693 (1955).
[59]State v. Garber, 197 Kan. 567, 419 P. 2d 896 (1966).
[60]*In re* Shinn, 195 Cal. App. 2d 683, 16 Cal. Rptr. 165 (1961).

a public school, it cannot deny the parent the right to send his child to a private school. One of the most famous cases involving compulsory attendance laws, *Pierce v. Society of Sisters*, did not directly involve either parent or child. Instead, the private school itself, as a corporation, claimed denial of due process of law because an Oregon compulsory attendance statute required all children ages eight to sixteen to attend public schools.[61] The appellees in the case were the Society of Sisters and Hill Military Academy, both private, profit-making corporations. The schools claimed that enforcement of the compulsory attendance law would deprive them of students, destroy the profitable features of their businesses, and diminish the value of their property.

No question was raised challenging the power of the state to reasonably regulate, inspect, supervise, and examine all schools, teachers, and pupils and to see that nothing was taught that was inimical to the public welfare. Apparently, the law was originally enacted to combat bolshevism, syndicalism, and communism. Supporters of the law sought to place all education more directly under the control of the state to prevent the teaching of certain economic doctrines.

In ruling in the plaintiffs' favor, the United States Supreme Court decided the case on the grounds that the state cannot, through improper regulation, deprive a business corporation of its patrons or customers. The law deprived the corporations of a liberty protected by the Fourteenth Amendment, according to the Court.

In a statement that must be considered *dictum* (since neither parents nor children were appellors), the Court remarked on the rights of both parent and child:

> The fundamental theory of liberty upon which all governments in this union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.[62]

Although the corporations challenging the statute had profit motives, there is no indication that the Court would have rendered a different opinion if the law had been challenged by either a child, a parent, or a nonprofit, private corporation. The state's right to

[61] Pierce v. Society of Sisters, 268 U.S. 510, 45 S. Ct. 571 (1925).
[62] *Id.*, p. 535.

the exercise of *parens patriae* is limited by the reasonableness of its acts.

INSTRUCTION AT HOME

Courts are not in agreement on whether home instruction constitutes instruction in a private school. Key elements in determining the validity of home instruction are the educational level of the parents and the regularity and time of instruction.

As we have seen, instruction in a private school must be equivalent to that of a public school. Home instruction, however, has not generally been held to be equivalent to the standards required of a private school.

An early Washington case rejected the home as a private school. In the case, the parent claimed his home instruction was authorized by a statute providing that children must attend "the public school of the district in which the child resides, for the full time such school may be in session, or . . . attend a private school for the same time." The parent further claimed that he was a qualified and competent teacher giving home instruction within the definition to the statute. This claim was rejected by the court.

The court explained:

> We do not think that the giving of instruction by a parent to a child, conceding the competency of the parent to fully instruct the child in all that is taught in the public schools, is within the meaning of the law "to attend a private school." Such a requirement means more than home instruction; it means that the same character of school as the public school, a regular, organized and existing institution making a business of instructing children of school age in the required studies and for the full time required by the laws of this state. . . . There may be a difference in institution and government, but the purpose and end of both public and private schools must be the same—the education of children of school age. The parent who teaches his children at home, whatever be his reason for desiring to do so, does not maintain such a school.[63]

Home instruction has been rejected because of difficulty of supervision. The state bears the responsibility of reasonable supervision to guarantee that students obtain an adequate education. If home instruction imposes an unreasonable burden on the state's performance of its duties, the instruction is not allowed. For example, a situation may exist where parents use education units so small or facilities of such doubtful quality that supervision creates an unusual expense for the state. The state requires that proper

[63]State v. Counort, 69 Wash. 361, 124 P. 910 (1912).

educational facilities be provided for the child and supplied in a way that the state can ascertain facts about the instructional program and maintain proper direction without undue cost.[64]

Critics have charged that home instruction does not comply with statutory requirements that a child attend a public, private, denominational, or parochial school and be taught by a competent instructor. In Kansas, the legislature reenacted a compulsory attendance law, leaving out a former provision for home instruction as a valid exemption from compulsory attendance. A court said that exclusion of home instruction, while including private, denominational, and parochial instruction as valid, indicated legislative intent to disallow home instruction as an excuse of nonattendance.[65]

Another Kansas case distinguished between a "private school" and "scheduled home instruction." Here parents operated a "school," serving as tutors themselves, with only their own children in attendance. The only grades taught were those in which their own children were enrolled. The court interpreted this as falling short of the definition of a private school, and ruled that the instruction given did not meet statutory requirements. In the view of the court, the program was nothing more than "home instruction."[66]

Where reference to home instruction was excluded from the statute, a California court refused to officially regard home instruction programs as qualified "private schools."[67]

Other cases, however, have established that home instruction may constitute "private school" instruction in contemplation of the law. For example, a parent who employs a competent, noncertified school teacher to instruct his child in the same curriculum and for the same period of time as the public schools is complying with the law, which requires instruction in a public, private, or parochial school.[68] The court said,

> The law was made for the parent who does not educate his child, and not for the parent who employs a teacher and pays him out of his private purse, and so places within the reach of the child the opportunity and means of acquiring an education equal to that obtainable in the public schools of the State.

In a similar case, an Illinois court held that parental instruction in the home was within the meaning of a statute requiring that all

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[64]State v. Hoyt, 84 N.H. 38, 146 A 170 (1929).
[65]State v. Well, 99 Kan. 167, 160 P. 1025 (1916).
[66]State v. Lowry, 191 Kan. 701, 383 P. 2d 962 (1963).
[67]People v. Turner, 121 Cal. App. 2d 861, 263 P. 2d 685 (1953).
[68]State v. Peterman, 32 Ind. App. 665, 70 N.E. 550 (1904).

children must attend a public, private, or parochial school where children are taught branches of education corresponding to that offered in the public schools. The court ruled that the mother, who had received training in education, was giving her child commensurate instruction including regular hours of study and recitation.[69] This court maintained that the number of children taking instruction was irrelevant. Further, the court said, the burden of proof was on the parent to show that (1) instruction was being provided in good faith, and (2) the prescribed courses of training were being met.

Recently, a New York state court approved a home instruction program in which the children were found to be reading above grade level when tested by the court. Testimony indicated that the children had formal lessons with their mother during the day and then did "homework" at night. In addition, the attendance officer testified, a surprise visit to the home found the children pursuing a discernible course of study.[70]

The parent is obliged to introduce evidence showing that home instruction is, in fact, being conducted. In a situation where a child was being taught regular public grade school subjects by the mother, the court still held that such instruction fell short of private school status. Grounds for this decision were the mother's failure to report the child's attendance in a private school and the fact that she had made no attempt to qualify the home as a private school.[71]

On the other hand, the state's case will not prevail if it merely assumes that the child is receiving no home instruction. Beyond this, the state must produce evidence documenting the parents' failure to furnish adequate home instruction.[72] The parent is, therefore, required to show evidence of home instruction. However, the final burden of proof is on the state to show that the home instruction is not equivalent education as required by law.[73]

Other cases have upheld the right of a parent to educate his child through private instruction,[74] but these cases were not decided di-

[69]People v. Levisen, 404 Ill. 574, 90 N.E. 2d 213 (1950).
[70]*In re* Foster, 69 Misc. 2d 400, 330 N.Y.S. 2d 8 (1972).
[71]State *ex rel.* Shoreline School Dist. v. Superior Court, 55 Wash. 2d 177, 346 P. 2d 999 (1959).
[72]Sheppard v. State, 306 P. 2d 346 (Okla. Cr. 1957).
[73]State v. Massa, 95 N.J. Super. 382, 231 A. 2d 252 (1967).
[74]Commonwealth v. Bey, 166 Pa. Super 136, 70 A. 2d 693 (1950); Connell v. Board of School Directors of Kennett Township, 356 Pa. 585, 52 A. 2d 645 (1947); *In re* Richards, 255 App. Div. 922, 7 N.Y.S. 2d 722 (1938); Wright v. State, 21 Okla. Crim. 430, 209 P. 179 (1922); Bevan v. Shears, 2 K.B. 936, Ann. Cas. 1912 A. 370 (1911).

rectly on the private school issue. In *Commonwealth v. Bey* a Pennsylvania statute made provision for instruction by properly qualified private tutors. In another case, *in re Richards*, the court's decision was based on the extenuating circumstance that the distance from schools and the lonely roads made home instruction necessary.

Aside from the importance of the statute's wording, one can probably conclude that the courts will measure home instruction against the standards of equivalency to public school instruction. In *Knox v. O'Brien*[75] the court set out three tests to determine equivalent education. The first test was consideration of the qualifications of the parent or instructor. Although not all compulsory attendance cases are decided on this point, the qualifications of the teacher are generally the foremost consideration. The second standard established by *O'Brien* concerned the teaching material, and the third was whether the children received the full advantages supplied by the public schools.

This last standard is the most difficult to accommodate, because it concerns association with other children. If children are educated alone at home, with no opportunity to interact with other children, one of the primary purposes of the public schools is *foiled* and equivalency is not provided. This represents a substantial departure from the view of earlier courts,[76] which generally held that the purpose of compulsory attendance was education *generally* and not education in any particular way. With the growing complexity of society, however, and the increased reliance of human beings on interpersonal relationships, the evolvement of the New Jersey court's attitude in *O'Brien* may be quite natural.[77]

If the courts adopt this general philosophy with regard to home instruction, the number of children will become important to the question of equivalency. Further, an extension of this doctrine could mean that true education is not accomplished unless a reasonable cross-section of society, or at least a random sample, is present to ensure the "commonness" of the common schools.

The court's view can best be summarized by noting that private school or home instruction must provide the child with an educational experience that is not restricted to the presence of teachers, materials, and facilities but that offers a minimum public school

[75]O'Brien, *supra* note 57.
[76]Commonwealth v. Roberts, 159 Mass. 372, 34 N.E. 402 (1893).
[77]*See also* Stephens v. Bongart, 15 N.J. Misc. 80, 189 Atl. 131 (1937).

practice.[78] Courts are not in general agreement on what constitutes this minimum, because conditions vary from state to state and the question is dependent on individual laws. Some jurisdictions have held that it is the result of the educational process, not the manner of obtaining it, that is important.[79] Other courts, however, have held that the private school means the conveyance of institutional details similar to those provided by the public schools.[80]

Home instruction may or may not qualify as a "private school" under either of these definitions, as the court concluded in *State v. Counort*:

> Such a requirement means more than home instruction. It means the same character of school as the public school, a regular, organized and existing institution, making a business of instructing children of school age in the required studies and for the full time required by the laws of this state.[81]

EXEMPTION FROM COMPULSORY ATTENDANCE

While private schools and home instruction provide alternatives to attendance in public schools, the child nevertheless is compelled to attend some school. Another kind of litigation that has arisen over the years has sought exemption from attending any school at all. The claims for exemption have generally been based on religious grounds, reasons of mental or physical unfitness, and marriage.

Religion

Following *Pierce v. Society of Sisters*,[82] it was rather uniformly assumed that children could be compelled to attend a public, private, or parochial school, but that no child had a right *not* to attend school at all.

Early cases established that the child's and the parents' rights of religious freedom, as protected by the First Amendment of the United States Constitution, were not sufficient to diminish the state's power to compel compulsory attendance. Justice Cardozo, in a concurring opinion in *Hamilton v. Regents*[83] (a case dealing with the rights of a conscientious objector), maintained that undesirable

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[78]Sheppard, *supra* note 72, at 344.
[79]Peterman, *supra* note 68.
[80]Turner, *supra* note 67.
[81]Counort, *supra* note 63.
[82]Pierce, *supra* note 61.
[83]Hamilton v. Regents, 293 U.S. 245, 55 S. Ct. 197 (1934).

results may evolve where religious scruples predominate over reasonable state laws. In delivering the opinion Cardozo said:

> Manifestly a different doctrine would carry us to lengths that have never yet been dreamed of. The conscientious objector, if his liberties were to be thus extended, might refuse to contribute taxes in furtherance of any other end condemned by his conscience as irreligious or immoral. The right of private judgment has never yet been so exalted above the powers and the compulsion of the agencies of government. One who is a martyr to a principle—which may turn out in the end to be a delusion or an error—does not prove by his martyrdom that he has kept within the law.

Following this rationale, other courts have concluded that the individual cannot be permitted, on religious grounds, to be the judge of his duty to obey reasonable civil requirements enacted in the interest of public welfare.

In a 1943 Virginia case,[84] the parents of three families sought to prevent enforcement of compulsory attendance laws on religious grounds. These parents interpreted the Bible as commanding parents to teach and train their own children. They believed that sending their children to public schools was incompatible with the primary religious obligation they felt they owed their Maker. Their willful intent to violate the law was solely because of sincere religious convictions.

The court, in deciding against the parents, declared:

> No amount of religious fervor he [parent] may entertain in opposition to adequate instruction should be allowed to work a lifelong injury to his child. Nor should he, for this religious reason, be suffered to inflict another illiterate citizen on his community or his state.

According to the court, religious grounds did not permit the individual to be the judge of his duty to obey reasonable laws. Although the religious issue was the *ratio decidendi* in the case, the court ruled that the parents were not capable of adequately educating the children themselves.

The qualifications of the parents to provide educational instruction are obviously an extenuating circumstance. This was the case in Oklahoma[85] where the parent, a Seventh Day Adventist, was allowed to undertake and manage the child's education at home because she was a qualified teacher. If she had not been so qualified, the court undoubtedly would have compelled the child to attend school.

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[84]Rice v. Commonwealth, 49 S.E. 2d 342, 3 ALR 2d 1392 (1948).
[85]Wright, *supra* note 74.

Religious grounds have also been ruled insufficient to limit the number of days a child attends school. A Moslem parent claimed that his religion prevented him from sending his children to school on Fridays.[86] Regardless of the validity of his religious motives, the court said the state allowed parental choice among public, private, and parochial schools. The parent and child did not, however, have the option of nonattendance on Fridays.[87]

Until recently, the prevailing view of the courts was that religious beliefs cannot impair achievement of the state's objective—universal compulsory education. The precedent-setting case that has radically altered this view is *Wisconsin v. Yoder*.[88] This case contested the power of the state to require the school attendance of Amish children after the eighth grade. Although the issue in this case is limited to the compulsory attendance of Amish children between the time they complete the eighth grade and the time they reach sixteen years of age, it nevertheless has profound implications for all future cases involving compulsory attendance.

The decision of the Court in this case can be summarized in three points. First, although the state has power to impose reasonable regulation, this power must be balanced against fundamental rights and interests of individuals. Second, beliefs that are philosophical rather than personal are not sufficient to invoke free exercise of religion. Third, where parents show that enforcement of compulsory education will endanger their religious beliefs, the *parens patriae* power of the state must give way to the free exercise clause of the First Amendment.

Wisconsin's compulsory attendance law required the parents to send their children to a public or private school until the age of sixteen. The Amish parents refused to send their fourteen- and fifteen-year-old children to any school, public or private, after completing the eighth grade.

The Court first acknowledged that the state, having the final responsibility for the education of its citizens, possessed the power to impose reasonable regulations for the "control and duration" of basic education. This power, the Supreme Court pointed out, is not free from a balancing process, however, when it impinges on a basic freedom.

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[86]Commonwealth v. Bey, 57 York Leg. Rec. (Pa.) 200, 92 Pitts. Leg. J. 84 (1944).

[87]*See also In re* Currence, 42 Misc. 2d 418, 248 N.Y.S. 2d 251 (1963). Here religious observance was no defense for withdrawing a boy from school weekly on Wednesday afternoons and Thursday mornings.

[88]Yoder, *supra* note 14.

The Court said, "The essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims of free exercise of religion."[89] The power of the state is, therefore, not absolute to the exclusion or subordination of other interests, even with an interest as strong and legitimate as compulsory attendance.

The second important aspect of *Yoder* is its determination of the quality of the claims of the parents with regard to their religious faith. To ascertain the legitimacy of the Amish claim, it was necessary for the Supreme Court to determine whether the parents acted as a result of "religious" belief or from some philosophical or personal rejection of contemporary secular values instead. Claims emanating from, for example, Thoreau's subjective philosophy of values do not fall within the protection of the religion clause.

On this question, the Court concluded that the Amish claims were founded in deep religious belief by which they had abided for almost three hundred years. This religious belief mandates that Amish live apart from the outside world and worldly influences in a church-oriented community, and that they remain attached to the soil, maintaining a simple, uncomplicated existence. The beliefs and lifestyle of the Amish have not been fundamentally altered for centuries.

These considerations led the Court to conclude that the Amish claims were based on religious tenets and not merely independent evaluation of societal norms. With this established, the Court proceeded to apply the free exercise of religion clause of the First Amendment.

The third important element of the case was the balancing of the state interest in compulsory education against established religious beliefs. Wisconsin contended that its interest in compulsory education was so compelling that even the established Amish religious practices must submit to the law. The state argued that, while "beliefs" are absolutely free from state control, "actions" are not, even though they are religiously grounded.

Dealing with this issue, the Court said that "belief and action cannot be neatly confined in logic-tight compartments." While it is true that many religiously based activities of individuals may be subject to regulation for health, safety, and general welfare, it is

[89] *Id.*, p. 1533.

erroneous to assume that all such conduct is subject to broad, unlimited state control.

In considering the state's compelling interest in compulsory education the Court examined the rationale for the state's enactment and enforcement of compulsory attendance laws, with particular reference to education beyond the eighth grade. Reviewing the historical foundations of these laws, the Court observed that such laws not only had the purpose of providing educational opportunity but were also enacted to prohibit child labor below age sixteen. Therefore, the Court concluded, part of the state's compelling interest is related to fair labor standards that were reputedly enacted to show concern for the child's welfare and, at the same time, prevent children from performing adult work. The two types of statutes—compulsory attendance and child labor laws—work to keep the child in school and out of the labor market. This safeguard was not relevant in the Amish children's situation.

The Court observed that the Amish children would be employed on family farms in agricultural work, which falls on the periphery of the objectives of child labor laws. No evidence was produced to show that employment on the family farms was in any way harmful to the child's health.

Further, the state could not show that the employment of Amish children on their own family farms glutted the labor market with children and eliminated jobs that might be held by adults.

Wisconsin also argued that the child's wishes were not expressed in the case, merely those of the parents. The controlling will—child's, parents, or state's—was not determined by the Court, since the children were not parties to the litigation. In exercising its power to apply the compulsory attendance law, the state had not attempted to determine the child's wishes. In other words, the state could not establish that the wishes of the children were different from those of the parents. In qualifying its decision, the Court explained:

> Our holding in no way determines the proper resolution of possible competing interests of parents, children, and the State in an appropriate state court proceeding in which the power of the State is asserted on the theory that Amish parents are preventing their minor children from attending high school despite their expressed desires to the contrary.[90]

The Court did say, however, that if the state is empowered to "save" the child from himself—or his Amish parents—by requir-

[90] *Id.*, p. 1541.

ing him to attend two additional years of school, the state as *parens patriae*, will influence and possibly determine to a considerable degree the religious future of the child. To the Court, though, this case involved only the fundamental right of the parent to direct the religious future of his child. The fundamental interest of the parent in directing his child's religious destiny, together with the unique and well-established beliefs of the Amish religion, led the Court to conclude that an all-encompassing application of *parens patriae* was inappropriate. The Court further concluded that such an application violated the parents' constitutional right of religious freedom.

Some observations involving religious exemption from compulsory attendance seem appropriate in view of *Yoder*. The state has legitimate power to enact and enforce compulsory attendance statutes, but the state's interest is not totally free from a balancing process between state interest and fundamental rights of individuals. Where compulsory education works to destroy religion, the free exercise clause may be invoked. Although a fine line may exist between exemption of certain religious groups from a law and its corollary of establishment of religion, the free exercise of religion will prevail.

Two dramatic limitations on the general applicability of *Yoder* are the objection of the Amish only to post-eighth-grade compulsory attendance of fourteen-and-fifteen-year-olds and the well-established Amish customs of living near the soil and shunning modern society generally. These features of the case tend to diminish the compelling interest of the state: they eliminate the possibility of illiteracy by providing at least eight years of schooling and negate the chance of these children becoming unproductive members of society.

The ultimate question of who will determine the child's destiny is not answered by the case. The court is content, instead, to speak rather vaguely of balancing the fundamental religious freedom of the parents against the interest of the state.

Marriage

Exemption from compulsory attendance is one of the dubious benefits of marriage. Courts have uniformly agreed that when a minor of less than sixteen years (otherwise required to attend school) is married, the minor is exempt from further compulsory attendance.

One of the precedents in this area was derived by the Supreme Court of Louisiana. A fifteen-year-old girl and her husband sought to set aside a judgment of a lower court committing her to the State Industrial School for Girls as a result of her truancy and alleged juvenile delinquency.[91] The girl did not deny truancy but claimed that her legal marriage exempted her from attendance. Although the marriage of a female under sixteen years of age was prohibited by law, the court ruled that once a girl is married, she enjoys the status of wife and has a right to live as such, emancipated from both school and parents. The court stated:

> The marriage relationship, regardless of the age of the persons involved, creates conditions and imposes obligations upon the parties that are obviously inconsistent with compulsory school attendance or with either the husband or wife remaining under the legal control of parents or other persons.

In another Louisiana case, a girl was truant and, in the lower court's opinion, a neglected child.[92] The girl, fourteen years of age, was married only a few days after the truant officer had taken her into custody. The lower court judge ignored the previous case *(Priest)* and committed the girl for an indefinite period to a state girls' school. The judge, exercising *parens patriae,* was of the opinion that the girl needed the care and protection of the state. The Supreme Court of Louisiana, while sympathetically viewing the judge's concern for the girl's welfare, held that the lower juvenile court could not commit her to the girls' school or prevent her from assuming the responsibilities of a married woman. The court stated that the power of such public policy determinations rested with the legislature and not the court.

A New York court later followed the rationale of these two cases. The girl had not been committed to a state school or been determined to be a delinquent, but she had resisted attempts to force her to attend school because she was married and wanted to be a housewife and homemaker.[93] The court, while recognizing the state's sovereignty concerning compulsory attendance, decided for the girl, observing that times and mores had changed since the compulsory attendance law was passed. The court also expressed doubt that the legislature had anticipated the question of such youthful marriage in passing the law.

In the eyes of the law, then, youthful marriage is another valid exemption from compulsory attendance laws. This determination,

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[91] State v. Priest, 210 La. 389, 27 So. 2d 173 (1946).
[92] *In re* State, 214 La. 1062, 39 So. 2d 731 (1949).
[93] *In re* Rogers, 36 Misc. 2d 680, 234 N.Y.S. 2d 179 (1962).

in the absence of specific statutory exemption, is predicated on the assumption that the responsibility of the minor, once married, is to be a productive member of society and that this is better achieved by establishing and supporting a home. The net effect of this reasoning is to remove both state and parental control over the alternatives available to the minor. Consequently, he has the choice and the right to decide on his own further education.

Vaccination

To protect the health and welfare of citizens, states have required school children to be vaccinated. Children going unvaccinated are not allowed to attend school. Courts have generally held that, if a parent violates a statute requiring vaccination, the parent is subject to arrest or fine, even if he claims religious, conscientious, or scientific objections.

In 1905 the United States Supreme Court held that a board of health requirement that all persons in Cambridge, Massachusetts, be vaccinated did not violate personal liberties secured under the Fourteenth Amendment.[94] In this case, the Court noted that "the liberty secured by the Constitution of the United States to every person within its jurisdiction does not impart an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good."

Although this particular decision directly challenged the vaccination regulation rather than compulsory attendance, the Supreme Court[95] nevertheless cited several state court decisions approving state statutes and making vaccination of children a condition of the right to attend public schools.[96]

In *Viemeister v. White*,[97] a turn-of-the-century New York decision, the appellant argued that vaccination not only did not prevent smallpox but tended instead to bring on other harmful diseases. The court, while not ruling that vaccination was a smallpox preventative, nevertheless maintained that laymen and physicians alike commonly believed that it did prevent smallpox. Acknowledging the difference between universal and common belief, the

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[94]Jacobson v. Commonwealth of Massachusetts, 197 U.S. 11, 25 S. Ct. 358 (1905).
[95]*Id.*, p. 364.
[96]Blue v. Beach, 155 Ind. 121, 56 N.E. 89 (1900); Morris v. Columbus, 102 Ga. 792, 30 S.E. 850 (1898); State v. Hay, 126 N.C. 999, 35 S.E. 459; Abeel v. Clark, 84 Cal. 226, 24 P. 383 (1890); Bissell v. Davidson, 65 Conn. 183, 32 A. 348 (1894); Hazen v. Strong, 2 Vt. 427 (1830); Duffield v. Williamsport School District, 162 Pa. 476, 29 A. 742 (1894).
[97]Viemeister v. White, 179 N.Y. 235, 72 N.E. 97 (1904).

court observed that few beliefs are accepted by everyone. The court then concluded that, even if it could not be conclusively proved that the vaccination was a preventative, in our Republican form of government the legislature has the right to pass laws based on common belief and the will of the people to promote health and welfare.

Is a parent guilty of violating the compulsory attendance law, then, if he sends his child to school without vaccination and the child is sent home by school authorities? Answering this question in the affirmative, a New York court said that attendance at a public school imposes certain conditions on a child. These requirements must be met in order for him to attend. However, the 1915 decision went on to say that under the public health law, vaccination was only required for children attending public schools. The parent could offer private equivalent education to the child and avoid vaccination. Here, however, the parent had not provided equivalent education and was, therefore, subject to penalty under the compulsory attendance law.[98]

In an earlier New York case, little tolerance was illustrated for parents who used vaccination as an excuse to prevent their children's attendance in public schools.

> It is obvious that a parent should not be allowed to escape his duty to send his children to school as provided by law on any excuse which is not an ample justification for such course. Our public school system has been developed with great pains and solicitude, and its maintenance and support have been recognized as so important for the welfare of the state that they have been provided for and safeguarded in the Constitution itself. As a part of this system a statute has been passed requiring attendance at school of children within certain limits. If indifferent or selfish parents, for ulterior purposes, such as the desire to place young children at labor, instead of school, or from capricious or recalcitrant motives, may be allowed to manufacture easy excuses for not sending their children to school, a ready method will have been developed for evading the statute compelling such attendance, and, if the statute which requires parents to see to it that their children attend and take advantage of this school system may be lightly and easily evaded, the purposes of the state in providing and insisting on education will be frustrated and impaired. Failure to comply with the statute ought not to be excused, except for some good reason.[99]

The earlier cases concerning school vaccinations were not generally related to First Amendment religious protections. In fact, the Supreme Court did not clarify the application of the "no state"

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[98]People v. McIlwain, 151 N.Y.S. 366 (1915).
[99]People v. Ekerold, 211 N.Y. 386, 105 N.E. 670 (1914).

provision of the Fourteenth Amendment until 1940, in *Cantwell v. Connecticut*.[100] The precedent of religious exemption from compulsory attendance, established in *Yoder*,[101] has bold implications for cases involving religious freedom from vaccination. In the past and present, however, the courts have ruled that a statute requiring vaccination does not violate the free exercise of religion.

In *Reynolds v. United States*[102] the Supreme Court explained that the First Amendment religious provisions embrace two concepts—the freedom to believe and the freedom to act. "The first is absolute but, in the nature of things, the second cannot be." Conduct remains subject to regulation for the protection of society. In every case the power of the state to act is predicated upon attaining a permissible end,[103] and vaccination to protect the health and welfare is a permissible end.

Parents in *State v. Drew* refused to have their child vaccinated, giving reasons as "partly religious and partly because they did not want that poison injected into their child." The Supreme Court of New Hampshire upheld the parents' conviction for violating the compulsory attendance law and said:

> The defendant's individual ideas, whether "conscientious," "religious," or "scientific" do not appear to be more than opinions. . . . The defendant's views cannot affect the validity of the statute or entitle him to be excepted from its provisions. . . . It is for the Legislature, not for him or for us to determine the question of policy involved in public health regulations.[104]

In a leading case involving religious objection, a local board of education in New Jersey enacted a regulation requiring immunization against diphtheria and vaccination against smallpox.[105] The board adopted the regulation on the strength of a state statute saying that boards of education "may" require immunization, leaving the issue to the discretion of the local boards.

The defendant, a Christian Scientist, was from Greece and was in this country temporarily. The board of education sought an injunction to prevent her from entering her children in the public schools until they were duly immunized, according to the school board regulation. The court decided that the religious issue was

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[100]Cantwell v. Connecticut, 310 U.S. 296, 60 S. Ct. 900, 128 ALR 1352 (1940).
[101]Yoder, *supra* note 14.
[102]Reynolds v. United States, 98 U.S. 145, 25 L. Ed. 244 (1878).
[103]Cantwell, *supra* note 100, at 1357.
[104]State v. Drew, 89 N.H. 54, 192 A. 629 (1937).
[105]Board of Education of Mountain Lakes v. Maas, 56 N.J. Super. 245, 152 A. 2d 394 (1959).

not meritorious because the parent was a foster parent. In addition, although the parent was Christian Scientist, the children were Greek Orthodox and did not themselves have religious objections. In further support of the school board, the court quoted other opinions establishing that the "guaranty of religious freedom was not intended to prohibit legislation with respect to the general public welfare."[106]

Another factor that has often emerged in vaccination cases is the extenuating circumstance of an epidemic. Where epidemic is imminent, there is no question concerning the state's power to protect the citizenry by requiring vaccination. However, where there is no evidence of the imminence of an epidemic, how do the courts view the issue? The question revolves around the further question of what is a reasonable state regulation? Can the state's requirement of vaccination be a reasonable and permissible restraint on constitutional rights in the absence of epidemic?

In *Jacobson*, the court repeatedly referred to the possibility of epidemic but did not base its decision on that point. The decision rested more fully on whether the authorities acted to protect public health and safety generally or to restrain individual freedoms selectively by requiring the vaccinations.[107]

In *Maas*[108] the defendant argued that compulsory vaccination and immunization were not needed in Mountain Lakes because there had been no smallpox or diphtheria for almost a decade. The court disagreed and ruled that the absence of an emergency does not warrant a denial of the exercise of preventive means. The court said, "A local board of education need not await an epidemic, or even a single sickness or death, before it decides to protect the public. To hold otherwise would be to destroy prevention as a means of combating the spread of disease."

Likewise, in *Stull v. Reber*,[109] the fact there had been no smallpox in the borough for forty years did not prevent enforcement of the compulsory vaccination regulation. Health authorities were not required to wait until an epidemic existed before acting to prevent one, the court said.[110] Neither would the fact that an epidemic had already started and it was too late to prevent the closing of school have been a reason to prevent compulsory vaccination.[111]

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[106]Sadlock v. Board of Education of Carlstadt, 137 N.J.L. 91, 58 A. 2d 218 (1948).
[107]Jacobson, *supra* note 94, at 362.
[108]Maas, *supra* note 105, at 405.
[109]Stull v. Reber, 215 Pa. 156, 64 A. 419 (1906).
[110]Hill v. Bickers, 171 Ky. 703, 188 S.W. 766 (1916).
[111]Board of Trustees v. McMurtry, 169 Ky. 457, 184 S.W. 390 (1916).

If the state board of health enacts a compulsory vaccination regulation made pursuant to statute, general statutory requirements requiring all pupils to comply with law are sufficient grounds for the board of education to enforce the statute.[112]

All these cases contested duly promulgated board rules that were enacted pursuant to state statutes. However, where no statute exists to empower school or health boards to pass compulsory vaccination regulations, the issues shift quite drastically. First, a board cannot enact regulations unless they are based on existing statutes. Where the board acts regardless of statute, the act is *ultra vires* (in excess of legal authority). Second, a board rule restricting school attendance cannot prevail over a legislative act granting free unlimited admittance to public schools.

Accordingly, two Illinois courts have decided that in the absence of a compulsory vaccination statute, an unvaccinated child cannot be denied a public education.[113] In both of these old cases, however, it appeared the school boards made little effort to draw enabling implications from health or education statutes.

In summary, one can reasonably make several conclusions regarding compulsory attendance and vaccination: (1) The legislature has power to enact a statute providing for vaccination and including a penalty for noncompliance. (2) Neither the parent nor the child has a constitutional right to schooling without complying with the statutory requirement of vaccination. (3) A parent cannot escape conviction for failing to have his child vaccinated by demanding the child be admitted to school unvaccinated. (4) Religious objection has not generally prevented enforcement of compulsory vaccination and attendance requirements.

In the wake of *Yoder*, there will no doubt be challenges on religious grounds, but they will probably be unsuccessful because of the obvious link between public health and the state requirement of vaccination.

Other Reasons for Exemption

Several states have passed laws for compulsory attendance exemption based on physical or mental incapacity, distance from school, and work permits.[114] Exemption from regular schools for physical or mental incapacity is quite reasonable, but in this era

[112]Mosier v. Barren County Board of Health, 308 Ky. 829, 215 S.W. 2d 967 (1948).
[113]Potts v. Breen, 167 Ill. 67, 47 N.E. 81 (1897); People *ex rel.* LaBaugh v. Board of Education of District No. 2, 52 N.E. 850 (1899).
[114]*See* chapter 2 of this monograph.

there is little justification for not providing special educational programs for handicapped children. The courts, in fact, have required parents to have the handicapped child in attendance.[115]

The distance a child travels to attend school was traditionally a reason for exemption from the general common schools. Although the automobile has reduced the inconvenience, distance continues to present problems, particularly in the sparsely populated areas of the West. Where statute exempts pupils who live beyond a certain distance from school and lack school transportation, the court's decision may be reduced to a matter of counting miles.

In such an instance in Texas, a lower court held a girl to be truant and delinquent because she failed to attend a high school to which she was assigned.[116] An appeal was made based on a state statute that exempted "any child living more than two and one-half miles by direct and traveled road from the nearest public school supported for the children of the same race and color of such child with no free transportation provided." Based on evidence that the home was only two miles from school and on the testimony of the mother that she did not know the school existed, the court held that the girl did not qualify for the distance exemption.

The connection between compulsory attendance laws and child labor laws is more apparent in the case of work permits than in any other area.[117] Work permits are a regulatory device used to prevent the employment of children who are either underage or subject to compulsory attendance laws. Possession of a work permit, however, may constitute valid exemption from compulsory attendance laws, if the statute so provides. Children working under the authority of such permits often have to take continuation courses to complete their education. Generally, to obtain a work permit, the parent and child must show economic necessity.

SUMMARY

The numerous and apparently complex problems surrounding compulsory attendance laws can be summarized in one question: Where does the child's destiny lie?

The choices are relatively simple: Should the parent be given the

[115]State v. Ghrist, 222 Iowa 1069, 270 N.W. 376 (1936); *see also* State *ex rel.* Beattie v. Board of Education, 169 Wis. 231, 172 N.W. 153 (1919); *In re* Wingard 7D & C2d 522, 18 Som. 1.

[116]Villarreal v. State, 429 S.W. 2d 659 Civ. App. Tex. (1968).

[117]Woltz, "Compulsory Attendance," p. 18.

final word over the educational future and well-being of the child? Should the parent—even though poorly educated and ignorant—determine that the child should attend school only to the third grade or possibly not at all? If the parent does not decide, then shall it be left up to the child? Suppose the child desires to attend school but the parent will not permit him, requiring him to work instead? On the other hand, suppose the ultimate decision is vested in the child to decide for himself whether he is to be educated? Should a seven-year-old child be given the power and the right to determine his destiny?

The obvious answer to these questions is provided by the court. They have uniformly upheld compulsory attendance laws. The collective judgment of the state, it is assumed, can and will act more rationally than individuals, whether parent or child.

The power of the state to enact and enforce compulsory attendance laws, however, is not to be exercised unreasonably. Nor is such power to be used in a manner that will deny fundamental rights, whether they be property rights or religious liberties.

Compulsory attendance laws among the states are generally rather flexible, allowing for children to attend private and parochial schools of their choice. These laws even permit, in many instances, home instruction with only the qualification of a vague finding of equivalency. Through its compulsory attendance laws, the state assumes the responsibility for the educational destiny of the child by establishing a state-mandated public school minimum. There is no restraint placed on the parent or the child, however, to prevent them from exercising alternatives that exceed this educational minimum.

5. PARENTAL CHOICE AND SCHOOL POWER

The concept of compulsory education allows the child several alternatives to public school attendance. Suppose the parent and child decide to fulfill the compulsory attendance mandate by attending a public school. What choices and options then does the child have? Can the child exercise educational program options such as class selection, grade-level choice, rejection of certain courses, and participation in extracurricular activities? How restrictive may the school be in exercising its *in loco parentis* role?

The pertinent answers to most of these questions will depend on the flexibility of the individual school program and the innovative-

ness of the administrators and teachers. It may not be fair, therefore, to generalize from the bare minimums required by the courts. Legal action is usually taken in the extreme conditions where the exercise of school power has become so oppressive that it provokes parents to seek relief in the courts. Alternatives and options mandated by the courts should then be viewed as establishing minimum levels of tolerance rather than circumscribing the outer boundaries of permissiveness.

SCHOOL POWER AND THE ACADEMIC PROGRAM

Once the child has entered the public school, he becomes subject to administrative regulations at the state and local levels, as well as to state laws governing public education. These regulations ideally are an exercise of state police power that provides each child an "appropriate" level of education. An "appropriate" education, however, may be viewed differently by different people—not only educators, but also parents and students.

Invariably, conflict over school placement arises between parents who believe they have "genius" or "near-genius" children and administrators who realize that all parents' children are at least "borderline geniuses." Controversy may also arise over a parental or childish aversion to some commonly practiced school activity. In settling these controversies, the courts have established the broad boundaries of school power. While these boundaries serve to facilitate the function and operation of the school, at the same time they undoubtedly place restraints on student options.

Reviewing court decisions in the area of student program selection, one is struck by the lack of a cohesive rationale supporting either school power or student choice. When all cases are viewed, school versus student power could be determined by the volume of the cases. One could quickly conclude, in other words, that the courts have tilted the scales substantially in favor of the school. However, in recent years, there has been a discernible trend toward the allowance of more student latitude, particularly where a constitutional right is involved.

In viewing these precedents, first let us review the court rulings that substantiate the power of the school over the educational program. Then we will discuss the limitations on this power emanating from student prerogative, constitutional and otherwise.

Judicial Support of School Power

Courts have generally given a wide berth to school administra-

tors in matters involving the educational program. In a recent Michigan case, parents sought a writ of *mandamus* to prevent the school district from using the novel *Slaughterhouse-Five* as a part of the instructional program.[118] The parents alleged that the material (an antiwar allegory dwelling on the horror of the firebombing of Dresden) was obscene, profane, and repugnant to the religious provisions of the First Amendment.

The court, in a thorough exposition on the law, first observed that, although there may have been religious references in the work, the book itself did not violate the students' and parents' religious freedom. To declare otherwise, the court concluded, would censor and prevent the public schools from making use of and reference to many great works of the past.

> If plaintiffs' contention was correct, then public school students could no longer marvel at Sir Galahad's saintly quest for the Holy Grail, nor be introduced to the dangers of Hitler's *Mein Kampf* nor read the mellifluous poetry of John Milton and John Donne. Unhappily, Robin Hood would be forced to forage without Friar Tuck and Shakespeare would have to delete Shylock from *The Merchant of Venice*. Is this to be the state of our law? Our Constitution does not command ignorance; on the contrary, it assures the people that the state may not relegate them to such a status and guarantees to all the precious and unfettered freedom of pursuing one's own intellectual pleasures in one's own personal way.[119]

Even more to the point, the court observed that the judges are not to be the experts in what subject matter is offered in the schools. Citing Justice Brennan's admonishment in *Schempp*,[120] the court contended that curriculum determination should be entrusted to the experienced school officials of the nation's public schools and not to the judges. The appellate court severely admonished the lower trial court for imposing its judgment of "right" and "moral" over that of the school authorities. Such action by a court was forbidden by the state constitution and a matter for the lawfully elected school board to determine. The appellate court concluded that the judicial censor was *persona non grata* in the formation of public education curriculum policies.

Obviously, parental intervention does not always promote greater freedom and choice for students. In many instances, such intervention may amount to an attempt to restrict knowledge and limit educational prerogative. Similarly, a court, unless it exercises suf-

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[118]Todd v. Rochester Community Schools, 41 Mich. App. 320, 200 N.W. 2d 90 (1972).
[119]*Id.*
[120]Abington Township v. Schempp, 374 U.S. at 300, 83 S. Ct. at 1612 (1963).

ficient restraint, could find itself sanctioning restriction rather than protecting freedom.

The school, in this context, is an arm of the state.[121] It is a creature of the legislature over which the legislature has complete control. The actual control of public schools is vested in the school board, which is required by the legislature to conduct the school in the best interest of the pupils. The determination of subject matter and required teaching force are solely within the discretion of the board.[122]

The liberal views toward sex in American society, coupled with a growing concern about population growth, have had an impact on the curriculum in most of the nation's schools. Sex education classes have burst into the curriculum of many school districts, startling parents who were not quite ready for their presence. The result has been several precedents regarding the school's power over curriculum development as opposed to perceived parental interest.

In one of these cases, which ultimately reached the United States Court of Appeals for the Fourth Circuit, parents sought to enjoin the Maryland State Board of Education from implementing a bylaw making local school systems provide, at both elementary and secondary levels, a comprehensive program of family life and sex study.[123] The plaintiffs alleged that the bylaw, if implemented by the state board, would violate their rights under the First and Fourteenth Amendments. The court found that the regulation was adopted by the department only after a study of the problem of pregnant students in the public schools. Even by viewing the plaintiffs' objections in their most favorable light, the court was unable to say that the parents' complaint had merit.

The Hawaii Supreme Court made a similar decision in litigation involving a film.[124] In this instance, the parents sought to enjoin the State Board of Education from continuing a film series, "Time of Your Life." This film was part of a newly adopted curriculum on family life and sex education, designed for fifth and sixth graders. The program was not compulsory and students could be excused from it on request, but the plaintiffs claimed the new pro-

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[121]Sturgis v. County of Allegan, 343 Mich. 209, 72 N.W. 2d 56 (1955).
[122]Kelly v. Dickson County School District, 64 Lack. Jur. 13 (1962).
[123]Cornwell v. State Board of Education, 314 F. Supp. 340, *affirmed*, 428 F. 2d 471 (1969).
[124]Medeiros v. Kyosaki, 478 P. 2d 314 (Hawaii 1970). *See also* Cornwell, *supra* note 123.

gram violated both their right of privacy and their freedom of religion.

In considering these matters, the court cited United States Supreme Court precedents[125] establishing that the state could not "contract the spectrum of available knowledge." Here, the court stated, the parents were seeking to do precisely the same thing. The court ultimately ruled against the parents, rejecting the claims that their religious freedom or right of privacy had been violated. The court was greatly influenced by the "excusal" feature of the program. In delivering the final opinion, the court pointed out several times that the child had the option of attending or going elsewhere. Although there is no indication that the "excusal" feature was the *ratio decidendi*, the court might have leaned the other way if the child had not had an option.

If "permissibility" was an important consideration to this court in approving the school board's power to continue use of sex educational material, the same was not true in a later Connecticut case.[126] Here again parents sought to restrain the state board from authorizing the teaching of family life and sex education, claiming that such instruction violated the students' rights to equal protection and due process under the Fourteenth Amendment and abridged the students' religious freedom under the First Amendment. With regard to the Fourteenth Amendment, the court found that since attendance in the courses was compulsory for all public school students without discrimination, the course was taught to all pupils without discrimination.

The plaintiffs based their religious objection on the fact that their church, the Catholic Church, required them to teach sex education in the home. The court said, however, that the parents had no exclusive right to teach sexual matters in the home and prohibit its teaching in the public schools. In addition, the court observed that the compulsory nature of the program did not render the parents' claims valid because, under the compulsory attendance laws, parents had alternatives to sending their children to the public schools.

Summarizing the issue in favor of the board of education, the court said:

> This case primarily questions the right of parents to regulate the education of their children in public schools as the parents' religious beliefs dictate, as against the justification of the state for regulating public educa-

[125]Meyer v. Nebraska, 262 U.S. 390, 43 S. Ct. 625 (1923); Pierce, *supra* note 61.
[126]Hopkins v. Hamden Board of Education, 29 Conn. Supp. 397, 289 A. 2d 914 (1971).

tion in a manner which might in some respects conflict with those beliefs. To permit such interference in the public school system by parents under the circumstances of this case could, unjustifiably, only tend to render a well-regulated public school system vulnerable to fragmentation whenever sincere, conscientious religious conflict is claimed.[127]

Parents have also contested the power of the school board to establish a nongraded school program. Parents in Michigan challenged the authority of the Lansing School Board to establish ungraded schools on the assumption that a statute requiring boards to "establish and carry on such grades, schools, and departments as it shall deem necessary" limited the board to a system of graded education.[128] The court held that this grant of discretionary authority did not limit the board's authority, in the absence of a showing of abuse of discretion.

The courts have generally supported the school boards when they have expanded the school program or introduced innovative curricula. Thus far, the courts have unanimously agreed that the school has the power to regulate and develop curriculum for the well-being of the students. These cases also established that not all parental discontent is aimed at broadening student knowledge and choice. In many instances, parents seek to restrict or "contract the spectrum of knowledge." As a result, the courts will tend to weigh such grievances very carefully, even when a parent feels that a constitutional right is being offended.

Such judicial support has also been expressed in a reverse situation where the school board seeks to reduce the length of the school day, thereby restricting the educational program. This situation arose in Livonia, Michigan. For lack of funds, the school board decided to hold one-half sessions and to teach certain subjects on a compressed schedule.[129] The Supreme Court of Michigan decided that in the absence of state board regulations limiting local school board authority in this area, the reduction in the school program was valid.

Although the content of the school program itself is an area of concern to parents, an even more direct concern is the placement of their children. Much of the litigation between parent and school has arisen during the child's first years of schooling. It is at this level that the parent and the child are experiencing the not-so-

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[127] *Id.*, p. 924.

[128] Schwan v. Board of Education of Lansing School District, 27 Mich. App. 391, 183 N.W. 2d 595 (1970).

[129] Welling v. Board of Education, 382 Mich. 620, 171 N.W. 2d 545 (1969).

unique experience of removing the child from the home and placing him in the hands of strangers at school.

It is interesting to note that several of these cases emanate from the state of New York. It is a matter of speculation whether this results from New York parents being more cantankerous, the school system being more abrasive, or just a natural tendency on the part of residents of that state to settle their arguments in court.

In one such New York State case, a mother petitioned the court for an order directing the board of education to admit her son to the first grade.[130] Previously, the boy had established quite a reputation as a "disciplinary problem." The school had demoted the boy from the first grade back to kindergarten, an action the parent maintained was arbitrary, capricious, unreasonable, and in violation of the Fourteenth Amendment and the New York Constitution. The board defended itself by maintaining the school principal had made an "educational decision" based on the boy's inability to perform first-grade work, his test results, and his lack of self-control. The petitioner was unable to rebut the test results. The court held that the placement of the child was within the school's authority "to provide rules and regulations for promotion from grade to grade, based not on age but on training, knowledge and ability.[131]

In a similar New York State decision, the parents of a five-year-old child sought to compel the school board to accept the child into the first grade.[132] According to New York law, a five-year-old is entitled to attend public schools, and the boy's parents claimed that kindergarten was not the public schools. The court disagreed with the parent, arguing that when a kindergarten is established it becomes a part of the public school system. Since the boy was already in *public school*, the court maintained, the parents had no right to insist that the boy be admitted to a particular *grade or class* in the public school.

In a case with a slightly different twist, a boy attended a private kindergarten that had not been registered with the state department of education.[133] On entering the public school, the child was placed back in kindergarten. He was not permitted to proceed to the first grade until he had been tested to determine if the private

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130Pittman v. Board of Education of Glen Cove, 56 Misc. 2d 51, 287 N.Y.S. 2d 551 (1967).

131*Id.*

132Isquith v. Levitt, 285 App. Div. 833, 137 N.Y.S. 2d 497 (1955).

133Silverberg v. Board of Education of Union Free School District, 60 Misc. 2d 701, 303 N.Y.S. 2d 816 (1969).

school kindergarten was substantially equivalent to the public school kindergarten. In denying the parents' petition to force the child's entry into the first grade, the court said that it can only determine whether a board acts arbitrarily, capriciously, or unreasonably and cannot substitute its judgment for educational decisions that have a rational base.

Placement of a pupil on the basis of test scores or achievement is obviously considered rational by the courts, but what about arbitrary age restrictions once the child is progressing through school? Such restrictions may be especially questionable where the child is academically qualified to progress through the program.[134]

This issue was brought to the attention of the courts in Bronx County, New York. Here a father contested a minimum-age rule (11.3 years) that prevented his son from being accelerated from the sixth grade into a junior high special progress class. The board predicated its denial solely on the ground that the boy was not old enough, though it readily conceded that the boy was academically well qualified. The board insisted the "age norms" were not arbitrary and were rational because they allowed younger students to develop emotionally, socially, and physiologically.

The court found that such rationale was not based on whim or caprice but on years of study derived from day-to-day dealings with children. In justifying the board's age limitation, the court tried its education wings:

> Certainly, the court may not hold as arbitrary or capricious the respondent's determination that chronologically determined physical, social and emotional maturity are vital and proper factors to be considered in the development and education of a child. To thrust a youngster into an environment where all his classmates are older may well result in the consequent impairment of the necessary social integration of the child with his classmates.[135]

All these precedents indicate that the courts, though sympathetic with the intentions of the parent, generally defer to authorized and trained educational experts in matters of school policy establishment. In recent years, however, there has been a greater tendency by the courts to delve deeper into the justification and rationale supporting educational policy. School authorities, therefore, would be well advised to document decisions with solid educational rationale.

The collective judgment of the school holds substantial influence

[134]Ackerman v. Rubin, 35 Misc. 2d 707, 231 N.Y.S. 2d 112 (1962).
[135]*Id.*

with the courts. Courts, therefore, hesitate to substitute their knowledge of children for that of educators. Fortunately, it is usually possible for the judge to be more objective than the child's parents toward the evaluation and treatment of the child. This places the judge in the position of the educator, trying to formulate a rule that will be objective in its application to all children.

Judicial Limitations on School Power

Although the school has generally prevailed in curriculum and placement disputes with parents, the school's power is by no means absolute. Where legitimate constitutional concerns are present, the courts stand ready to invalidate the offending regulations, particularly if the action of the school tends to contract rather than expand knowledge. Such judicial intervention is not uncommon and has been demonstrated in several notable United States Supreme Court cases.

In *Meyer v. State of Nebraska*,[136] the Court ruled that legislative determination of educational matters was subject to supervision by the courts. Nebraska had attempted to contract available knowledge by forbidding the teaching of foreign languages in public and private schools before the eighth grade. The Court rejected the rather elusive notion that the state, in the exercise of its police power, was protecting the child's health by limiting his mental activities.

Curriculum content was also the issue in a more recent Supreme Court case where the old Scopes "monkey law" controversy was resurrected.[137] As in *Meyer*, this action was brought by a teacher who was subjected to criminal prosecution for teaching Darwin's theory of evolution. In holding the law unconstitutional, the Court commented that judicial interference in the operation of public schools requires care and restraint. Furthermore, the Supreme Court said the courts should not intervene in conflicts that arise in the daily operation of the schools, so long as the conflicts do not involve basic constitutional values. On the other hand, neither would the Court "tolerate laws which cast a pall of orthodoxy over the classroom."[138]

Technically, the basic constitutional value involved was freedom of religion, but the entire tone of the antievolution statute was to

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[136]Meyer, *supra* note 125.
[137]Epperson v. Arkansas, 393 U.S. 99, 89 S. Ct. 266 (1968).
[138]Keyishian v. Board of Regents, 385 U.S. 589, 87 S. Ct. 675 (1967).

limit or restrict the knowledge available to children. This result, as pointed out, will usually engender judicial suspicion.[139]

The Court delivered a similar opinion in *Sweezy v. New Hampshire:*[140]

> Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate . . . [The state cannot] chill that free play of the spirit which all teachers ought especially to cultivate and practice.[141]

These cases firmly establish the precedent for judicial intervention in education matters where constitutional rights and freedoms are at issue. Several other Supreme Court decisions have also established that the state cannot compel students to perform rituals that violate their freedom of religion.[142] All these precedents combine to limit state school power in favor of individual freedom of choice.

Similar limitations on school power have also been rendered in the absence of denial of constitutional right. In New York, for example, a children's court would not allow total reliance on a readiness test that was the school's justification for placing a seven-year-old back in kindergarten. The court refused to find the parent neglectful under the compulsory attendance law when he refused to send the child to school if he had to attend kindergarten. The parent was willing to send the child to the first grade when the school decided to place him there. The court pointed out that, though it could not require the school to place the child in the first grade, it would not declare child neglect by the parent, either.

The authority of a parent to influence or alter a school's decision on placement or subject matter selection is not a recent phenomenon.[143] In fact, some of the most revealing cases in this area were litigated during the early development of the public school system. Many of these early decisions indicate that parental choice today may not be as great as it was a few years ago. On the other hand, it is more likely that the school, with its modern educational methods and materials, will be able to identify and accommodate the student's individual needs than will the parent.

139Epperson, *supra* note 137.

140Sweezy v. New Hampshire, 354 U.S. 234, 77 S. Ct. 1203 (1957).

141Wieman v. Updegraff, 344 U.S. 183, 73 S. Ct. 215 (1952).

142McCollum v. Board of Education, 333 U.S. 203, 68 S. Ct. 461 (1948); Engel v. Vitale, 370 U.S. 421, 82 S. Ct. 1261 (1962); Abington Township v. Schempp, 374 U.S. 203, 83 S. Ct. 1560 (1963); West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 S. Ct. 1178 (1943).

143Harold H. Punke, "Parental Choices in Education," *The Alabama Lawyer* 31 (1970): 218.

In an 1874 Wisconsin case,[144] the court declared unreasonable the assumption that a scholar should or could study all the branches of knowledge taught by a school. The court felt some discretion must be reserved for parental choice as to the studies the student would pursue. As to choosing the proper courses, the court contended that "[t]he parent is quite as likely to make a wise and judicious selection as the teacher." The court denied that allowing parental selection would disrupt the educational processes, asserting, instead,

> The rights of one pupil must be so exercised, undoubtedly, as not to prejudice the equal rights of others; but the parent has the right to make a reasonable selection from the prescribed studies for his child to pursue, and this cannot possibly conflict with the equal rights of other pupils. . . . And how it will result disastrously to the proper discipline, efficiency, and well-being of the common schools, to concede this paramount right to the parent to make a reasonable choice from the studies in the prescribed course which his child shall pursue, is a proposition we cannot understand.

If a statute prescribes a minimum course of study, the student has little choice but to take the course unless he has some valid constitutional objection. The courts are more likely to intervene when a student contests a local school requirement to take a specific course of instruction.

Rulison concerns an 1863 Illinois statute that described a certain course of study to be taught in the common schools of Illinois but did not prohibit electives in higher branches of learning.[145]

Several years later, a girl refused to take bookkeeping, a course required by the local school program but beyond the state mandatory program. In a bit of questionable pedagogy, the principal expelled the girl from school and forcibly ejected her from the building. Claiming she was not in good health and was taking piano lessons after school hours to become a music teacher, the parents argued that the total load of bookkeeping and piano in addition to other subject matter was too great.

The court upheld the local board's power to require the state's mandatory courses but supported the parents' option as to other branches. The parents, according to the court, had the responsibility to prepare children for the duties of later life. Therefore, it should be within the parents' prerogative to exercise options beyond the statutory school program.[146]

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[144]Morrow v. Wood, 35 Wis. 59, 17 Am. Rep. 471 (1874).
[145]Rulison v. Post, 79 Ill. 567 (1875).
[146]*See* State *ex rel.* Sheibley v. School District, 31 Neb. 552 (1891).

Similarly, in another Illinois case, the court held that every child attending high school could not be compelled to take every course of study.[147] The law withdraws from the parent the exercise of only those parental rights that would impair the efficiency of the school, the court reasoned.

In many cases, a philosophy prevails that the parent has the responsibility for the child's education and the state simply reinforces the parental prerogative through compulsory attendance and minimum curriculum laws. Blackstone said that the greatest duty of parents to their children is that of giving them an education.

Under common law, education was not compulsory and the duty of the parent to provide an education was not compelled by the state. The theory was that the parent who did not educate his child would reap the ill effects and grief of an uneducated offspring. Compulsory attendance laws, of course, acknowledge that an illiterate offspring has grievous effects not only on the parent but on society as well.

According to some courts, compulsory attendance laws, however, did not remove the parental responsibility or right of choice to select a course of study for the child. This attitude was demonstrated by an Oklahoma court that ruled, in 1909, that school authorities of the state had the power to classify and grade scholars, to prescribe courses and textbooks, to require prompt attendance and deportment, and to require diligence in study. The school did not have the power, however, to deny the parent a reasonable selection of a course of study. According to the court, "The parent, however, has a right to make a reasonable selection from the prescribed course of study for his child to pursue, and this selection must be respected by the school authorities, as the right of the parent in that regard is superior to that of the school officers and the teachers."[148]

The parental authority to select a course of study is held in high esteem by the courts. In one case, in the absence of parental request for a course change, the court held for the school. Here a boy sought exemption from an English requirement to write a composition but failed to have his father request an exception. The court said, "[I]f the father . . . had requested the teacher not to require the plaintiff to write compositions, he would have been excused therefrom."[149]

147Trustees of School v. People, 87 Ill. 303, 29 Am. Rep. 55 (1877).

148School Board Dist. No. 18, Garvin County v. Thompson, 24 Okla. 1, 103 P. 578 (1909).

149Guernsey v. Pitman, 32 Vt. 224, 76 Am. Rep. 171 (1859).

Although these cases are rather old, their philosophical base bears a striking resemblance to that reflected by *Meyer*[150] in 1923 and *Yoder*[151] in 1972.

In *Meyer*, the Supreme Court said, "The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."

In *Yoder*, though in *dictum*, the court affirmed the power of the parent as the primary authority concerning the educational well-being of the child: "That the history and culture of western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children is now established beyond debate as an enduring American tradition."

SUMMARY

Several important elements may be identified in the cases on parental choice of student placement, assignment, and curriculum. First, in the absence of a pervasive constitutional question (such as religion or race), the school's power to compel attendance, assign pupils, and require a minimum educational program is superior to the parental prerogative.

It is clear that the controlling factor in many cases is not the issue of school power versus parental power but is a question of the freedom to provide an unlimited source of knowledge. Neither school nor parent can "contract the spectrum of available knowledge." If either school or parent tries to do so, the courts will reject the attempt. This is true particularly when parents seek to restrict the knowledge available to *all* children and do not limit their censorship to their own children.

The weight of recent authority indicates that the school will prevail when parents contest pupil assignment. The predominant theme here is "reasonableness," and it is evident that the courts will seek a rationale from the schools to support their decisions. Uses of achievement scores, grades, psychological examinations, and age criteria for pupil placement have all been upheld as valid reasons for justifying the school's decision.

Courts today also tend to recognize experienced and duly trained

[150]Meyer, *supra* note 125.
[151]Yoder, *supra* note 14.

educators as qualified to make educational decisions. Nevertheless, the judges, while emphatically maintaining they are not qualified as teachers, will at times intervene and substitute their judgment for that of the educator. In fairness to the judiciary, there is usually at least a question of equity or reasonableness, if not of a legitimate constitutional issue, involved in most of these cases.

Limitations on school power may derive from the Constitution but manifest themselves in the vague surroundings of parental rights and powers to control their children. In many instances, the courts have held that it is not the Constitution but the historical and common-law tradition and, in some cases, an almost religious rationale that support parental authority to regulate the child's education. For example, "While municipal laws took care to enforce these duties [parental duties], yet it was presumed that the natural love and affection implanted by providence in the breast of every parent had done so more effectively than any law."[152]

Parental power, then, can be exercised above the minimums established by the law. Parental judgment establishes the outer limits of the child's education and is the primary determinant of direction, while the state mandates the level to be attained and serves as the primary enforcer. It is the state, through the school, that guarantees to society that the child will have a minimum educational opportunity, regardless of the aspirations of the parent.

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[152]Garvin, *supra* note 148.

APPENDIX

TABLE A-1. ENROLLMENT IN GRADES 9-12 IN PUBLIC AND NONPUBLIC SCHOOLS COMPARED WITH POPULATION 14-17 YEARS OF AGE: UNITED STATES, 1889-90 TO FALL 1970

School Year	Enrollment, grades 9-12 and postgraduate[1]			Population 14-17 years of age[2]	Total number enrolled per 100 persons 14-17 years of age
	All Schools	Public Schools	Nonpublic Schools		
1	2	3	4	5	6
1889-90	359,949	[3]202,963	[3]94,931	5,354,653	6.7
1899-1900	699,403	[3]519,251	[3]110,797	6,152,231	11.4
1909-10	1,115,398	[3]915,061	[3]117,400	7,220,298	15.4
1919-20	2,500,176	[3]2,200,389	[3]213,920	7,735,841	32.3
1929-30	4,804,255	[3,4]4,399,422	[3, 4]341,158	9,341,221	51.4
1939-40	7,123,009	6,635,337	487,672	9,720,419	73.3
1941-42	6,933,265	6,420,544	512,721	[5]9,749,000	71.1
1943-44	6,030,617	5,584,656	445,961	[5]9,449,000	63.8
1945-46	6,237,133	5,664,528	572,605	[5]9,056,000	68.9
1947-48	6,305,168	5,675,937	629,231	[5]8,841,000	71.3
1949-50	6,453,009	5,757,810	695,199	8,404,768	76.8
1951-52	6,596,351	5,917,384	678,967	[5]8,516,000	77.5
1953-54	7,108,973	6,330,565	778,408	[5]8,861,000	80.2
1955-56	7,774,975	6,917,790	857,185	[5]9,207,000	84.4
1957-58	8,869,186	7,905,469	963,717	[5]10,139,000	87.5
1959-60	9,599,810	8,531,454	1,068,356	11,154,879	86.1
1961-62	10,768,972	9,616,755	1,152,217	[5]12,006,000	89.7
Fall 1963	12,255,496	10,935,536	1,319,960	[5]13,499,000	90.8
Fall 1965	13,020,823	11,657,808	1,363,015	[5]14,104,000	92.3
Fall 1969	14,518,301	13,084,301	[6]1,434,000	[5]15,460,000	93.9
Fall 1970[7]	14,840,000	13,400,000	1,440,000	[5]15,816,000	93.8

[1]Unless otherwise indicated, includes enrollment in subcollegiate departments of institutions of higher education and in residential schools for exceptional children. Beginning in 1949-50, also includes federal schools.

[2]Includes all persons residing in the United States, but excludes Armed Forces overseas. Data shown are actual figures from the decennial censuses of population unless otherwise indicated.

[3]Excludes enrollment in subcollegiate departments of institutions of higher education and in residential schools for exceptional children.

[4]Data for 1927-28.

[5]Estimated by the Bureau of the Census as of July 1 preceding the opening of the school year.

[6]Estimated.

[7]Preliminary data.

NOTE: Beginning in 1959-60, includes Alaska and Hawaii.

SOURCE: U.S. Department of Health, Education, and Welfare, Office of Education, *Biennial Survey of Education in the United States*, chapters on Statistical Summary of Education; and unpublished data available in the office of Education.

FROM: U.S. Department of Health, Education, and Welfare, Office of Education, *Digest of Educational Statistics, 1971 Edition*, p. 27, table 31.

TABLE A-2. PRIMARY COMPULSORY SCHOOL ATTENDANCE STATUTE: FIFTY STATES INCLUDING THE DISTRICT OF COLUMBIA AND PUERTO RICO, 1972

State	Primary Statute Reference
Alabama	Section 52-297
Alaska	Section 14.30.010
Arizona	Section 15-321
Arkansas	Section 80-1502-1508
California	Section 12101
Colorado	Section 123-20-5
Connecticut	Section 10-184
Delaware	T.14, Section 2702
District of Columbia	Section 31-201
Florida	Section 232.01
Georgia	Section 32-2104
Hawaii	Section 298-9
Idaho	Section 33-202
Illinois	122 Section 26-1
Indiana	Section 28-505
Iowa	Section 299.1
Kansas	Section 72-1107
Kentucky	Section 159.010
Louisiana	Section 17:221
Maine	T.20, Section 911
Maryland	77 Section 92
Massachusetts	76 Section 1
Michigan	Section 340.731
Minnesota	Section 120.10
Mississippi	Repealed by Laws 1956, chapter 288
Missouri	Section 167.031
Montana	Section 75-6303
Nebraska	Section 79-201
Nevada	Section 392.040
New Hampshire	Section 193.1
New Jersey	Section 18A: 38-25
New Mexico	Section 73-13-3
New York	Section 3205 (1)
North Carolina	Section 115-166
North Dakota	Section 15-34.1-01
Ohio	Section 3321.01
Oklahoma	T.70, Section 10-10
Oregon	Section 339.010
Pennsylvania	24 Section 13-1326
Puerto Rico	T.18, Section 80
Rhode Island	Section 16-19-1
South Carolina	Section 21-757
South Dakota	SDCL 13-27-1
Tennessee	Section 49-1708
Texas	Section 21.032
Utah	Section 53-24-1
Vermont	T.16, Section 1121
Virginia	Section 22-275.1
Washington	RCW 28A. 27.010
West Virginia	Section 1847
Wisconsin	Section 118.15
Wyoming	Section 21.1-48

TABLE A-3. COMPULSORY SCHOOL ATTENDANCE AGE LIMITS: FIFTY STATES INCLUDING THE DISTRICT OF COLUMBIA AND PUERTO RICO, SELECTED YEARS FROM 1887 TO 1972

State	1887[1]	1915[1]	1935[1]	1959[1]	1965[1]	1972[2]
Alabama	...	...	7-16	7-16	7-16	7-16
Alaska	...	...	7-16	7-16	7-16	7-16
Arizona	...	8-16	8-16	8-16	8-16	8-16
Arkansas	...	8-20	7-16	7-16	7-16	7-16
California	8-14	7-15	8-16	8-16	8-16	6-18
Colorado	...	8-16	8-16	8-16	7-16	7-16
Connecticut	8-16	7-16	7-16	7-16	7-16	7-16
Delaware	...	7-14	7-17	7-16	7-16	6-16
District of Columbia	8-14	8-14	7-16	7-16	7-16	7-16
Florida	...	...	7-16	7-16	7-16	7-16
Georgia	...	...	8-14	7-16	7-16	7-16
Hawaii	...	6-15	6-14	6-16	6-16	6-18
Idaho	8-14	8-18	8-18	7-16	7-16	7-16
Illinois	7-14	7-16	7-16	7-16	7-16	7-16
Indiana	...	7-16	7-16	7-16	7-16	7-16
Iowa	...	7-16	7-16	7-16	7-16	7-16
Kansas	8-14	8-15	7-16	7-16	7-16	7-16
Kentucky	...	7-16	7-16	7-16	7-16	7-16
Louisiana	...	8-16	7-14	7-16	7-16	7-16
Maine	8-15	7-15	7-16	7 16	7-17	7-17
Maryland	...	8-16	7-16	7-16	7-16	6-16
Massachusetts	8-14	7-16	7-16	7-16	7-16	6-16
Michigan	8-14	7-16	7-16	6-16	6-16	6-16
Minnesota	8-16	8-16	8-16	7-16	7-16	7-16
Mississippi	...	...	7-17	...	...	...
Missouri	...	8-16	7-16	7-16	7-16	7-16
Montana	8-14	8-16	8-16	7-16	7-16	7-16
Nebraska	8-14	7-15	7-16	7-16	7-16	7-16
Nevada	8-14	8-16	7-18	7-17	7-17	7-17
New Hampshire	6-16	8-16	8-16	6-16	6-16	6-16
New Jersey	7-16	7-16	7-16	7-16	6-16	6-16
New Mexico	...	7-14	6-17	6-17	6-17	6-17
New York	8-14	8-16	7-16	7-16	7-16	6-16
North Carolina	...	8-12	7-14	7-16	7-16	7-16
North Dakota	10-14	8-15	7-17	7-16	7-16	7-16
Ohio	8-16	8-16	6-18	6-18	6-18	6-18
Oklahoma	...	8-16	8-18	7-18	7-18	7-18
Oregon	...	9-15	8-16	7-18	7-18	7-18
Pennsylvania	...	8-16	8-16	8-17	8-17	8-17
Puerto Rico	...	8-14	8-14	8-14	8-16	8-14
Rhode Island	7-15	7-15	7-16	7-16	7-16	7-16
South Carolina	...	...	8-14	...	...	7-16
South Dakota	10-14	8-14	8-17	7-16	7-16	7-16
Tennessee	...	8-16	7-17	7-17	7-17	7-17
Texas	...	...	7-16	7-16	7-17	7-17
Utah	...	8-16	8-18	6-18	6-18	6-18
Vermont	8-14	8-16	8-16	7-16	7-16	7-16
Virginia	...	8-12	7-15	7-16	7-16	[3]6-17
Washington	8-18	8-16	8-16	8-16	8-16	8-18
West Virginia	...	8-15	7-16	7-16	7-16	7-16
Wisconsin	7-15	7-16	7-16	7-16	7-16	7-16
Wyoming	7-16	7-14	7-16	7-16	7-17	7-16

[1]August W. Steinhilber and Carl J. Sokolowski, *State Law on Compulsory Attendance* (Washington: U.S. Government Printing Office, 1966). U.S. Office of Education Circular No. 793.

[2]SOURCE: Analysis of statutes from individual states.

[3]If law is adopted locally.

NOTE: Where there is no entry, a state had no compulsory attendance law for the year reported. The Laws typically permit exemptions for children within the age ranges for several reasons, such as completion of certain grades or, under certain conditions, employment.

TABLE A-4. MINIMUM AND MAXIMUM AGES FOR COMPULSORY AND PERMISSIVE SCHOOL ATTENDANCE: FIFTY STATES INCLUDING THE DISTRICT OF COLUMBIA AND PUERTO RICO, 1972

State	Compulsory Attendance Age Range		Permissive Attendance	
	Minimum	Maximum	Minimum Age	Max. Age
Alabama	7	16	18[6]	(5)
Alaska	7	16	6	19[20]
Arizona	8	16	18[6]	20[21]
Arkansas	7	16	5	(21)
California	6	18	18[5]	(5)
Colorado	7[7]	16	18[6]	21[21]
Connecticut	7	16	18[6]	(5)
Delaware	6	16	6	14[21]
District of Columbia	7	16	6	(5)
Florida	7	16	18[6]	(5)
Georgia	7	16	6	21[19]
Hawaii	6	18	6	(5)
Idaho	7	16	6	22[21]
Illinois	7	16	18[6]	21
Indiana	7[7]	16	(5)	(5)
Iowa	7	16	18[5]	22[21]
Kansas	7	16	18[6]	(5) (21)
Kentucky	7[7]	16	18[6]	21, 23[21]
Louisiana	7[7]	16	18[6]	(5) (21)
Maine	7	11[17]	18[6]	21
Maryland	6	16	5	20
Massachusetts	6	16	(5) (18)	(5)
Michigan	6	16	18[5]	(5)
Minnesota	7	16	18[5]	21[21]
Mississippi	(5)	(5)	6	(5)
Missouri	7	16	6	20
Montana	7	16	6	21
Nebraska	7	16	18[5]	21
Nevada	6[7]	17	18[6]	(5)
New Hampshire	6	12[16]	(5)	(5)
New Jersey	6	16	5	22[20]
New Mexico	6	17	(5)	(5)
New York	6	13[16]	5	23[21]
North Carolina	7[7]	16	6	19, 22[21]
North Dakota	8[7]	16	6	21
Ohio	6	18	18[6]	(5)
Oklahoma	7	18	6	19, 23[21]
Oregon	7	18	18[6]	21
Pennsylvania	8[8]	17	18[6]	19[21]
Puerto Rico	8	14	5	18
Rhode Island	7	16	18[6]	(5)
South Carolina	7	16	6	22[21]
South Dakota	7	16	5	19, 23[18]
Tennessee	10[7]	14[16]	18[6]	(5)
Texas	7	17	6	21
Utah	6	18	6	19[18]
Vermont	7	15[16]	6	22[18]
Virginia[16]	6	17	18[7]	22[20]
Washington	8	18	18[6]	21
West Virginia	7	16	18[6]	21
Wisconsin	7	17[16]	18[4]	22[20]
Wyoming	7	16	18[6]	(5)

[1]Migrant children are specifically required to attend schools while they are in session and shall attend school in the district where the migrant child is receiving shelter and the necessities of life.

[2]The compulsory attendance law applies to all minors residing or domiciled in the state and also to all minors who make their habitat in the state continuously for at least 3 months.

[3]No child or parent shall be excused from the law on the ground that the child's residence is seasonable or that his parent is a resident of another state.

[4]The governor may suspend compulsory attendance up to one year in any parish or parishes, in the event of disaster, flood, disorder, riot, violence, or any other emergency.

[5]Not specified in statutes.

[6]Indian children aged 8-20 who are eligible for admission to schools established by the United States shall attend such schools.

[7]The state compulsory attendance law shall not be in force in any city or county that has a stricter feature than the state law prescribes.

[8]Includes children on government bases.

[9]A migratory child of compulsory school age must attend school during the time schools are in session in the district of his temporary domicile.

[10]A child assigned to a school other than that nearest his home, or on the basis of race or related factors, is exempt from the compulsory attendance statutes.

[11]A pupil over 16 years of age may be excused with the consent of parent or guardian and approval of the school board if in the judgment of the principal a suitable work or work study program is available.

[12]Every person aged 16-21 who cannot read and speak English understandingly, shall, unless excused, attend an evening or special day school, if one is available in the district where he resides or is employed, until he has completed the minimum course of studies prescribed by the state board.

[13]Compulsory full-time school attendance may be extended to unemployed minors aged 16-17 by the local board in a city or in a union free school district with a population of over 4,500 which has a superintendent of schools.

[14]Inclusive.

[15]A pupil over age 16 who is enrolled must attend regularly, and the enforcement and penalty provisions of the attendance laws apply to the child.

[16]Unless the compulsory attendance article is affirmatively enacted by the county, city, or town, school attendance is not required for children of the district.

[17]A student who will become 16 during a semester must remain in school until the end of semester.

[18]Special provision exists for young children who are not of the permissive school age.

[19]Special provision exists for students who have not completed either elementary or high school.

[20]The requirement that children between the ages of 6 and 21 be admitted is not applicable to high schools.

[21]Special provision exists for marriage and/or pregnancy.

[22]Special provision exists for older students.

[23]Special provision exists for veterans and disabled persons.

SOURCE: Analysis of statutes from individual states.

TABLE A-5. MINIMUM SCHOOL TERM REQUIRED (1972) AND LENGTH OF SCHOOL TERM (1967-68) IN PUBLIC ELEMENTARY AND SECONDARY SCHOOLS, BY STATE

State	Minimum School Term Required[1]	Average Length of Term in Days[2]
Alabama	180 days	175.4
Alaska	180 days	176.6
Arizona	[3]175 days	175.0
Arkansas	175 days	175.4
California	[4]175 days	178.0
Colorado	[5]180 days	179.6
Connecticut	180 days	180.0
Delaware	180 days	180.0
District of Columbia	180 days	176.8
Florida	180 days	180.0
Georgia	180 days	180.0
Hawaii	[6]10 months	177.4
Idaho	180 days	181.0
Illinois	176 days	177.0
Indiana	9 months	[14]177.0
Iowa	180 days	179.6
Kansas	180 days	178.6
Kentucky	185 days	173.6
Louisiana	180 days	178.0
Maine	180 days	181.2
Maryland	180 days	183.3
Massachusetts	180 days	181.0
Michigan	180 days	180.0
Minnesota	[7]175 days	177.8
Mississippi	[8]175 days	177.0
Missouri	174 days	[14]177.5
Montana	180 days	180.7
Nebraska	175 days	178.7
Nevada	[9]180 days	179.6
New Hampshire	180 days	179.9
New Jersey	[10]180 days	[14]181.1
New Mexico	180 days	180.0
New York	[11]180 days	180.0
North Carolina	180 days	[14]180.0
North Dakota	180 days	181.0
Ohio	182 days	179.8
Oklahoma	180 days	176.0
Oregon	175 days	178.2
Pennsylvania	180 days	181.6
Puerto Rico	160 days	182.7
Rhode Island	180 days	180.0
South Carolina	No statutory provision	180.0
South Dakota	175 days	178.5
Tennessee	175 days	176.0
Texas	[12]165 days	175.0
Utah	9 months	180.2
Vermont	175 days	171.8
Virginia	180 days	180.7
Washington	180 days	180.0
West Virginia	180 days	181.1
Wisconsin	[13]180 days	180.0
Wyoming	177 days	180.0

[1]SOURCE: Analysis of statutes from individual states.
[2]SOURCE: U.S. Department of Health, Education, and Welfare, Office of Education, *Statistics of State School Systems*, 1967-1968.
[3]Longer if sufficient funds are available.

[4]Districts must maintain a school session for 175 days to qualify for apportionment from the state school fund. The statutory provision for a minimum school term is 3 months.

[5]School districts must schedule 180 actual days of school to qualify for state support. The statutory provision for a minimum school term is 3 months.

[6]Department of Education Policy No. 1710-3 states that the school year will consist of 10 months in which teaching is done. There is no statutory provision for a minimum school term.

[7]Full special state aid is provided to districts that operate schools for 175 days. The statutory provision for a minimum school term is 9 months.

[8]The state aid formula is based on a term of 9 months or 175 days. The statutory provision for a minimum school term is 4 months.

[9]The minimum school term is 9 months, consisting of 20 days each, if sufficient funds are available. The statutory provision for a minimum school term is 6 months.

[10]For purposes of apportioning state aid, a district must operate schools for 180 days. There is no statutory provision for a minimum school term.

[11]The state aid allotment is based on 180 days. The statutory provision for a minimum school term is 190 days, inclusive of legal holidays, exclusive of Saturdays.

[12]No statutory provision for a minimum school term exists, but a child is required to attend for a minimum of 165 days.

[13]The minimum school term in Milwaukee is set by the school board.

[14]Data for the 1965-66 school year.

TABLE A-6. STATUTORY PROVISIONS FOR EXEMPTION FROM SCHOOL ATTENDANCE: FIFTY STATES INCLUDING THE DISTRICT OF COLUMBIA AND PUERTO RICO, 1972

State	Mental, Emotional, and/or Physical Disability	Lack of Transportation (Distance too far)	Legal Employment to Support Dependents and/or Other Valid Reasons	Nonpublic Attendance	Private Tutor	Completion of Minimal Educational Program: No. Years	Reasons Other Than Employment by a School Board, Superintendent, or Judge
Alabama	x	[1]x	[2]x		x	12	
Alaska	x	[3]x		x		12	x
Arizona	x		[4]x			8	x
Arkansas	x		x			8	
California	x			x			
Colorado	x		x	x	x	12	x
Connecticut			[5]x	x			
Delaware	x			x			
District of Columbia	x						x
Florida	x	[6]x	x			12	
Georgia	x						
Hawaii	x	x	[7]x		x		
Idaho	x			x			
Illinois	x		x				x
Indiana	x						
Iowa	x		[8]x	x	x	8	x
Kansas	x						
Kentucky	x			x		12	
Louisiana	x	[9]x					
Maine				x			
Maryland	x			x			x
Massachusetts	x		[10]x	x			
Michigan		[11]x		(12)			
Minnesota	x			x	x	10	
Mississippi					x		
Missouri	x		[13]x		[14]x	15[8]	
Montana	x					12	
Nebraska	x		[16]x			12	
Nevada	x	[17]x	[18]x	x	x	19[8]	[20]x
New Hampshire	x						
New Jersey	x			x			

New Mexico	x	[21]x	[22]x	x		12	
New York	x		[23]x	x		12	
North Carolina	x						
North Dakota	x		x	x		12	
Ohio	x		[24]x		x	12	x
Oklahoma	x			x	x	12	x
Oregon	x	[25]x		x	x	12	[26]x
Pennsylvania	x	[27]x	[28]x			12	
Puerto Rico	[29]x	[30]x				12	x
Rhode Island	x			x			
South Carolina							
South Dakota	x			x	x	8	
Tennessee	x	[31]x				12	[32]x
Texas	x		[33]x				
Utah	x	[34]x	[35]x		x	12	[36]x
Vermont	x			x		10	[37]x
Virginia[38]	x	[39]x					x
Washington	x	x	[40]x			9	x
West Virginia	x	[41]x	[42]x	x	x	12	x
Wisconsin	[43]x			x		[44]12	x
Wyoming	[45]x		x			8	x

[1]A child may be exempted if the lack of transportation would require him to walk over 2½ miles to attend public school.

[2]A child may be exempted if he is legally and regularly employed under the Child Labor Law and holds a work permit.

[3]A child may be exempted if he resides more than 2 miles from either a public school or a route on which transportation is provided (does not apply if the pupil resides within 2 miles of a federal or private school that he is elegible and able to attend).

[4]A child may be exempted if he is over 14 years of age and, with parental consent, is employed at a lawful wage-earning occupation.

[5]A child may be exempted if he is over 14, has completed the equivalent of 8 yearly grades, and has been granted a leaving certificate to labor at home or in any occupation.

[6]A child may be exempted if he is 6-10 years of age and because of distance and lack of public transportation would be compelled to walk 3 miles, or is 11 or older and would be compelled to walk 4 miles.

[7]A child may be exempted who is 15 and suitably employed and has been excused from school attendance by authorized parties.

[8]A child may be exempted if he is over 14 and regularly employed.

[9]A child may be exempted if he lives outside the boundaries of a city, town, or municipality, more than 2½ miles from school, where no free transportation is provided; or lives more than 1½ miles from a transfer route providing transportation furnished by the school board.

[10]A child may be exempted if he is granted an employment permit by the superintendent of schools upon determination that the child's welfare would be better served by the granting of such a permit.

(Continued on next page)

TABLE A-6 (Continued)

[11]A child may be exempted if he is under 9 years of age and does not reside within 2 miles, by the nearest traveled road, of some public school and is not provided transportation by the school district.

[12]A child may be exempted for attendance at confirmation classes between 12 and 14 years of age for a period of not more than 5 months in either of the years (12-14).

[13]A child may be exempted for legal employment if he is aged 14-16 and is excused by the superintendent of schools or a court.

[14]A child may be exempted if he is provided with supervised correspondence study or supervised home instruction.

[15]A child may be exempted if he is 16 and has successfully completed the eighth grade.

[16]A child may be exempted if he is 14 and has completed the eighth grade and his earnings are necessary for his own or his dependents' support.

[17]A child may be exempted if the state board of education determines that he resides at a distance from school that would make attendance unsafe or impractical.

[18]A child may be exempted if he is over 14 and must work for his own or his parents' support, as shown by satisfactory written evidence.

[19]A child may be exempted if he is 14 and has completed elementary school and no high school is maintained in his district.

[20]A child may be exempted if he is over age 14 and is excused by the school board.

[21]A child may be exempted if he resides more than 3 miles from school and no free public transportation is furnished.

[22]A child may be exempted if he is 14 years old and legally employed, on issuance of a certificate of employment by the school superintendent.

[23]A minor who is eligible for and who has applied for a standard employment certificate may, though unemployed, be permitted to attend part-time school for no fewer than 20 hours per week instead of full-time school.

[24]A child may be exempted if he is 14 and is excused for a limited period by the district superintendent to perform necessary work for his parents.

[25]A child may be exempted between the ages of 7 and 10 whose parents live more than 1½ miles, and children over 10 years of age whose parents live more than 3 miles, by the nearest traveled road from some public school and for whom the school district does not provide transportation.

[26]The district school board has the authority to excuse a child from compulsory attendance if he has completed the first eight grades and if further attendance would be educationally unprofitable for him or cause hardship in the family.

[27]A child may be exempted if he resides 2 miles or more by the nearest public highway from any public school in session to which no proper free transportation is provided.

[28]A child may be exempted who is 14 or over and engaged in farm work or private domestic service and has satisfactorily completed the highest grade of the elementary or organization prevailing in the district in which he resides, if issuance of a permit is recommended by the county or district superintendent of schools or private school principal, for a reason approved by the superintendent of public instruction.

[29]A child may be exempted if he is certified as being mentally unfit by the school supervisor after a required examination.

[30]A child may be exempted if he resides outside a reasonable distance from a public school.

[31]A child may be exempted if he lives more than 3 miles from school and free transportation is not furnished, or more than 3 miles from a school transportation route.

[32]A child may be exempted if he is 15 years old and his continued compulsory attendance, in the opinion of the district board of edu-

(Continued on next page)

TABLE A-6 (Continued)

cation, would be detrimental to other students and not of substantial benefit to the child; provided that the board of education shall first obtain the recommendation in writing from the district superintendent and the principal of the school.

[33]A child may be exempted if he is more than 17 years of age and has satisfactorily completed the work of the ninth grade and presents evidence to the county superintendent that his services are needed by a parent or other person standing in a parental relationship.

[34]A child may be exempted if he resides more than 2½ miles from school and free transportation is not provided.

[35]A child may be exempted if he is over age 16 and has completed the eighth grade or his services are required to support his parent.

[36]A child may be exempted if he is over age 16 and is excused upon recommendation of the superintendent and approval of the board as unable to profit from school attendance.

[37]A child may be exempted if he is 15 and has finished the sixth grade, if his services are needed for support of his dependents, or for any other sufficient reason with the recommendation of the superintendent and the consent of the school board.

[38]Unless the compulsory attendance article is affirmatively enacted by the county, city, or town, school attendance is not required for children of the district.

[39]A child may be exempted if he is under age 10 and lives more than 2 miles from a public school, unless public transportation is provided within 1 mile of the child's home; or is age 10-16 and lives more than 2½ miles from a public school, unless public transportation is provided within 1½ miles of the child's home.

[40]A child may be exempted if he is 15 and regularly and lawfully employed.

[41]A child may be exempted if he resides more than 2 miles by the shortest practicable and safe route from a school bus route.

[42]A child may be exempted if he has graduated from the eighth grade, is of normal intelligence, and is granted a work permit after investigation by the county superintendent.

[43]A child may be exempted if he is not in proper physical condition to attend school (as attested by certificate of a physician).

[44]A child may be exempted from completing high school if he resides in a district that does not operate a high school and is exempted by the superintendent, or has completed 8 grades and is attending vocational school or an adult education school full-time in lieu of attendance at any other school.

[45]A child may be exempted who is mentally incapable of doing the work of the eighth grade, or is an invalid.

SOURCE: Analysis of statutes from individual states.

TABLE A-7. AGE AT WHICH PERMIT FOR EMPLOYMENT DURING SCHOOL HOURS MAY BE ISSUED TO A CHILD OF COMPULSORY SCHOOL AGE; AND MINIMUM EDUCATION FOR EMPLOYMENT PERMITS TO A CHILD OF COMPULSORY SCHOOL AGE, 1972

State	Age	Min. Ed.
Alabama	14-16	None specified
Alaska	No provision	No provision
Arizona	14	5 years in identified subjects
Arkansas	15	8 grades
California	[1]15	If 15, 7th grade
Colorado	14-16	None specified
Connecticut	14-16	8 grades
Delaware	14-16	8 grades
District of Columbia	14-16	8 grades
Florida	[2]14-16	8 grades
Georgia	14	High school
Hawaii	Under 16	No provision
Idaho	None required	No provision
Illinois	Under 16	No provision
Indiana	14-16	8 grades
Iowa	14	No provision
Kansas	14-16	Elementary school
Kentucky	14-16	High school
Louisiana	Under 16	No provision
Maine	Under 16	Elementary school
Maryland	Under 16	No provision
Massachusetts	14-16	6 grades
Michigan	No provision	No provision
Minnesota	14-16	Common school
Mississippi	Not applicable	No provision
Missouri	14-16	No provision
Montana	No provision	No provision
Nebraska	14	8 grades
Nevada	14	8 grades
New Hampshire	14	Read and write simple sentences in English
New Jersey	None	No provision
New Mexico	14-16	No provision
New York	14-15	No provision
North Carolina	No provision	No provision
North Dakota	14	8 grades
Ohio	16	Successfully completed occupational training
Oklahoma	14	Under 16 must read and write simple English sentences
Oregon	14-16	No provision
Pennsylvania	14-17	Highest elementary grade in district
Puerto Rico	14-16	No provision
Rhode Island	No provision	Not applicable
South Carolina	No provision	No provision
South Dakota	Under age 16	Ability to read and write simple English sentences
Tennessee	14-16	No provision
Texas	14	7 grades
Utah	14	No provision
Vermont	Under 16	Elementary school
Virginia	14	No provision
Washington	Over 15	8 grades
West Virginia	Under 16	8 grades
Wisconsin	14	Completion of equivalent of most advanced course of study in district
Wyoming	14	No provision

[1]14 if necessary to support family.
[2]12-15 when employment is in the child's best interest.
SOURCE: Analysis of statutes from individual states.

TABLE A-8. PENALTY FOR NONCOMPLIANCE TO COMPULSORY ATTENDANCE STATUTES BY PARENT OR OTHER ADULTS

State	1972—Fine	1972—Imprisonment
Alabama	Up to $100 and/or	Max. 90 days hard labor
Alaska	[1]$50-$200+costs	Imprisonment until fine+cost paid or 1 day/$2 fine+cost
Arizona	$5-$300 and/or	Imprisonment for 1-90 days
Arkansas	[2]$1,000 maximum and/or	30 days
California	[3]Up to $25 first offense or	Up to 5 days
Colorado	No provision	Confinement for contempt of court until order is complied with
Connecticut	[4]Up to $5 fine for each violation	No provision
Delaware	[5]First offense $5-$25	For default of payment of fine—first offense 2 days
District of Columbia	[6]$10 and/or	5 days in jail
Florida	[7]No provision	No provision
Georgia	Up to $100, and/or	30 days imprisonment
Hawaii	$5-$50 or	Up to 2 months imprisonment
Idaho	[8]No provision	No provision
Illinois	[9]First offense, $5-$20 and/or	Imprisonment in county jail for 5 days
Indiana	$500, and/or	6 months imprisonment
Iowa	$5-$20 for each offense	No provision
Kansas	[10]No provision	No provision
Kentucky	Up to $10 for first offense and up to $20 subsequent offenses	No provision
Louisiana	[2]Up to $10 and/or	Up to 10 days imprisonment
Maine	Up to $25 or	Up to 30 days imprisonment
Maryland	Up to $50 for each offense	No provision
Massachusetts	Up to $20	No provision
Michigan	$5-$50 and/or	Imprisonment for 2-90 days
Minnesota	Up to $50 or	Imprisonment for up to 30 days
Mississippi	No provision	No provision
Missouri	$10-$25 and/or	Imprisonment of 2-10 days
Montana	$5-$20 or $100 surety bond	10-30 days for refusal to comply
Nebraska	[11]No provision	No provision
Nevada	[9]After notice; first offense, up to $10 and/or	Up to 5 days imprisonment
New Hampshire	Up to $10 for each offense	No provision
New Jersey	Up to $5 for first offense; for each subsequent offense, up to $25	No provision
New Mexico	$5-$100, or	5-90 days in county jail

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TABLE A-8. (Continued)

State	1972—Fine	1972—Imprisonment
New York	[12]No provision	No provision
North Carolina	Up to $50 and/or	Up to 30 days imprisonment
North Dakota	$100 for first offense; $200 for every subsequent offense	No provision
Ohio	$5-$20;	For refusal to pay fine, 10-30 days imprisonment
Oklahoma	Up to $50 and/or	Up to 10 days
Oregon	Up to $50 and/or	Up to 30 days
Pennsylvania	Up to $2 first offense, subsequent offenses up to $5 plus costs	Up to 5 days for default of payment
Puerto Rico	[13]Up to $25 and/or	Up to 20 days
Rhode Island	Up to $20 for each offense	No provision
South Carolina	No provision	No provision
South Dakota	[14]$10-$50 for the first offense	No provision
Tennessee	$2-$10 and costs	No provision
Texas	First offense $5, second offense $10, subsequent offenses $25	No provision
Utah	[15]No provision	No provision
Vermont	$5-$50	No provision
Virginia	[16]No provision	No provision
Washington	Up to $25	No provision
West Virginia	$3-$20 with costs, or	5-20 days confinement in jail
Wisconsin	$5-$50 and/or	Up to 3 months in county jail
Wyoming	$5-$25 and/or	Up to 10 days

[1]Each unlawful absence is a violation and if an absence is extensive a new violation exists each time 5 consecutive days of absence elapse.
[2]Every day of violation constitutes a separate offense.
[3]For each subsequent offense, fine of $25-$250, or imprisonment for 5-25 days, or both.
[4]Each week of noncompliance is a separate offense.
[5]Subsequent offenses $25-$50; up to 5 days imprisonment for each subsequent offense for default of fine.
[6]Each 2 days of absence constitute a separate offense.
[7]For violation of attendance laws by a parent: misdemeanor of the second degree.
[8]Habitual truant child shall come under purview of the youth rehabilitation law.
[9]For each subsequent offense, fine of $10-$50, or imprisonment of 5-25 days, or both.
[10]The general provisions of the Juvenile Code apply to truant children.
[11]Pupils who are habitual truants or are incorrigible may be required to attend a special school.
[12]Upon being arrested by an attendance officer, an unlawfully absent child shall be placed in attendance at school.
[13]Judgment may be stayed until further violation with payment of costs on first conviction.
[14]Subsequent offenses: fine of $25-$100, or 30 days in county jail, or both.
[15]For violation of attendance laws by parent: misdemeanor.
[16]For violation of the compulsory attendance provisions by any person: misdemeanor.
SOURCE: Analysis of statutes from individual states.

TABLE A-9. SELECTED DATA ON THE SCHOOL CENSUS AND CENSUS OF THE HANDICAPPED: FIFTY STATES INCLUDING THE DISTRICT OF COLUMBIA AND PUERTO RICO, 1972

State	School Census			Census of the Handicapped		
	Authorization	Frequency	Age Span	Authorization	Frequency	Type of Handicap
Alabama	Mandatory	Every 4 yrs.	6-21	Mandatory	Annual	Deaf and Blind
Alaska	.....	.....	.....	.....	.....	.....
Arizona	.....	.....	.....	.....	.....	.....
Arkansas	Mandatory	Every 2 yrs.	5-21	.....	.....	.....
California	.....	.....	.....	.....	.....	.....
Colorado	Mandatory	When ordered by state	6-21	.....	.....	.....
Connecticut	Mandatory	Annual	Birth-21	Mandatory	Annual	All
Delaware	Mandatory	Biennial	5-18	Mandatory	Continuous	All
District of Columbia	Mandatory	Annual	3-18	.....	.....	.....
Florida	.....	.....	.....	Mandatory	.....	All
Georgia	Mandatory	Continuous	.....	.....	.....	All
Hawaii	.....	.....	.....	Mandatory	.....	All
Idaho	.....	.....	.....	Mandatory	Annual	All
Illinois	.....	.....	.....	Mandatory	Every 4 yrs.	All
Indiana	.....	.....	.....	.....	.....	.....
Iowa	Permissive	.....	5-19	Mandatory	Annual	All
Kansas	Permissive	Annual	Birth-21	Permissive	Annual	All
Kentucky	Mandatory	Continuous	6-18	Mandatory	Annual	All
Louisiana	Mandatory	Every 4 yrs.	Birth-19	.....	.....	.....
Maine	Permissive	Annual	5-21	Mandatory	Annual	All
Maryland	Permissive	.....	Birth-18	Permissive	.....	All
Massachusetts	Mandatory	Annual	5-16	Mandatory	Annual	All
Michigan	Permissive	Continuous	Birth-20	Permissive	Continuous	All
Minnesota	Mandatory	Annual	Birth-21	Mandatory	Annual	All
Mississippi	Mandatory	Annual	Birth-19	.....	.....	.....
Missouri	Mandatory	Annual	6-20	Mandatory	Annual	Deaf and Blind
Montana	Mandatory	Annual	Birth-21	Mandatory	Annual	All
Nebraska	Mandatory	Annual	5-21	Mandatory	Annual	All
Nevada	.....	.....	.....	.....	.....	.....
New Hampshire	Mandatory	Annual	Birth-18	Mandatory	Annual	All
New Jersey	Permissive	Annual	5-18	Mandatory	Annual	All
New Mexico	Mandatory	Annual	6-18	Permissive	Annual	All
New York	Mandatory	Annual	Birth-18	Mandatory	Continuous	All

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TABLE A-9. (Continued)

State	School Census			Census of the Handicapped		
	Authorization	Frequency	Age Span	Authorization	Frequency	Type of Handicap
North Carolina	Mandatory	Continuous	7-16	Mandatory	Continuous	All
North Dakota	Mandatory	Biennial	Birth-21	Mandatory	Biennial	All
Ohio	.....	.....	.....	.....	.....	.....
Oklahoma	Mandatory	Annual	Birth-18	.....	.....	.....
Oregon	.....	.....	.....	.....	.....	.....
Pennsylvania	Mandatory	Annual	Birth-18	Mandatory	Annual	All
Puerto Rico	.....	.....	.....	.....	.....	.....
Rhode Island	Mandatory	Annual	4-21	Mandatory	Annual	All
South Carolina	Mandatory	Annual	6-21	Mandatory	Annual	All
South Dakota	Mandatory	Annual	Birth-21	Mandatory	Annual	All
Tennessee	Mandatory	Every 10 yrs.	Birth-16	Mandatory	.....	All
Texas	Mandatory	Annual	7-18	.....	.....	.....
Utah	Mandatory	Annual	Birth-18	Mandatory	Annual	All
Vermont	Mandatory	Annual	6-18	.....	.....	.....
Virginia	Mandatory	Every 3 yrs.	0-20	Mandatory	Every 3 yrs.	All
Washington	Mandatory	Annual	5-21	Mandatory	Annual	All
West Virginia	Permissive	Annual	Birth-20	Permissive	Annual	All
Wisconsin	Mandatory	Annual	4-20	Mandatory	Annual	All
Wyoming	Mandatory	Annual	6-21	.....	.....	.....

SOURCE: Analysis of statutes from individual states.

THE FIRST SERIES OF FIVE PAPERS ON STUDENT CONTROL AND STUDENT RIGHTS ARE COMPLETE

They include:

1. *Legal Aspects of Control of Student Activities by Public School Authorities*, by E. Edmund Reutter, Jr., professor of education, Columbia University;

2. *Rights and Freedoms of Public School Students: Directions from the 1960s*, by Dale Gaddy, director, Microform Project, American Association of Junior Colleges, Washington, D.C.;

3. *Suspension and Expulsion of Public School Students*, by Robert E. Phay, associate professor of public law and government, University of North Carolina;

4. *Legal Aspects of Crime Investigation in the Public Schools*, by William G. Buss, professor of law, University of Iowa; and

5. *Legal Aspects of Student Records*, by Henry E. Butler, Jr., professor of educational administration, University of Arizona; K. D. Moran, assistant executive director of Kansas Association of School Boards, Topeka, Kansas; Floyd A. Vanderpool, Jr., principal, Stober Elementary School, Lakewood, Colorado.